

ORIGINAL

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
Phoenix Payment Systems, Inc.,	:	Case No. 14-11848 (MFW)
	:	
Debtor.	:	Docket Ref. No.
	:	
	:	

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR (A) TO OBTAIN
POSTPETITION FINANCING ON A SENIOR SECURED AND GRANTING PRIMING
LIENS AND (B) TO UTILIZE CASH COLLATERAL; (II) GRANTING ADEQUATE
PROTECTION TO THE DIP LENDER; (III) SCHEDULING
FINAL HEARING; AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”), dated August 4 2014, Phoenix Payment Systems, Inc. (the “**Debtor**” or “**Phoenix**”) in the above-captioned chapter 11 case (the “**Case**”), pursuant to sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtor seeks this Court’s authorization:

(a) for the Debtor to obtain senior secured postpetition financing pursuant to that certain Senior Secured Debtor-In-Possession Credit and Security Agreement, dated as of July 31, 2014 (the “**DIP Facility**”,¹ collectively with all ancillary documents at any time executed in connection therewith, the “**DIP Credit Documents**”) and attached hereto as Exhibit 1, up to the aggregate principal amount of \$5,000,000.00 (the actual available principal amount at any time being subject to the conditions set forth in the DIP Credit Documents) from The Bancorp Bank (the “**DIP Lender**” or “**Bancorp**”), with such DIP Facility:

¹ Capitalized terms used but not defined herein shall have the meanings given to them in the DIP Facility.

(i) having priority, pursuant to section 364(c)(1) of the Bankruptcy Code, over any and all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, except for the Carve Out (as defined below);

(ii) being secured, pursuant to section 364(d)(1) of the Bankruptcy Code, by perfected first priority senior priming liens on all present and after-acquired property of the Debtor that is subject to a lien on or after the Petition Date and to any liens granted after the commencement of the Case to provide adequate protection in respect thereof, subject only to the Carve Out and the Senior Liens, as provided below;

(iii) being secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by perfected first priority security interests in and liens upon all unencumbered prepetition and postpetition property of the Debtor;

(iv) being secured, pursuant to section 364(c)(3) of the Bankruptcy Code, by perfected junior security interests in and liens upon all prepetition and postpetition property of the Debtor that is subject to valid and perfected liens in existence at the time of the commencement of the Case or to valid liens in existence at the time of such commencement and perfected thereafter as permitted by section 546(b) of the Bankruptcy Code (in each case other than liens that secure the Prepetition Secured Obligations (as defined below)); and

(b) for the Debtor to use the cash collateral² pursuant to sections 361, 362 and 363 of the Bankruptcy Code, and other collateral in which DIP Lender has an interest (together with the Cash Collateral, the “**Prepetition Collateral**”) and provide adequate protection with respect to any diminution in the value of the DIP Lender’s interests in the Prepetition Collateral resulting from the use of the Cash Collateral and the use, sale or lease of the Prepetition Collateral (other than the Cash Collateral) or imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code;

(c) to schedule, pursuant to Bankruptcy Rule 4001, an interim hearing (the “**Interim Hearing**”) on the Motion for this Court to consider entry of this interim order (the “**Interim Order**”) (i) authorizing the Debtors, on an interim basis, to forthwith borrow from the DIP Facility up to the aggregate amount of \$2,750,000.00 (of the \$5,000,000.00 available under the terms of the DIP Facility), (ii) authorizing the use by the Debtor of Cash Collateral, and (iii) granting the adequate protection hereinafter described;

(d) to schedule, pursuant to Bankruptcy Rule 4001, a final hearing (the “**Final Hearing**”) for this Court to consider entry of a final order (the “**Final Order**”) authorizing the balance of the DIP Facility on a final basis, as set forth in this Motion and the DIP Facility attached to this Motion; and

² “Cash Collateral” shall have the meaning set forth in section 363(a) of the Bankruptcy Code.

(e) the granting of certain related relief.

The Interim Hearing having been held by this Court on August 5, 2014 and upon the record made by the Debtor at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW WHICH SHALL CONSTITUTE THE ORDER OF THE COURT:

1. *Jurisdiction.* On August 4, 2014 (the “**Petition Date**”), the Debtor commenced this Case by filing its petition for relief under chapter 11 of the Bankruptcy Code. This Court has core jurisdiction over the Case, this Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice.* Notice of the Motion, the relief requested therein and the Interim Hearing was served by the Debtor on (a) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”), (b) the DIP Lender, (c) the Internal Revenue Service, (d) other known holders of liens, and (e) the parties included on the Debtor’s list of twenty (20) largest unsecured creditors. Under the circumstances, such notice complies with Bankruptcy Rules 4001(b) and (c) and Local Rules 4001-2 and 9013-1(m).

3. *Objections.* All objections to the entry of this Order, if any, hereby are resolved or, to the extent not resolved, overruled.

4. *Debtor’s Stipulations.* Without prejudice to the rights of any other party (but subject to the limitations thereon contained in paragraph 20 below), the Debtor admits, stipulates and agrees that:

(a) The Debtor is duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted. The Debtor has the requisite power to file the bankruptcy petition filed in this case and the requisite authority to enter into the DIP Credit Documents, as detailed herein.

(b) The Debtor derives substantially all of its revenues from merchants whose customers pay with Visa U.S.A. Inc. or MasterCard International Incorporated and possibly other credit card associations (collectively, the “Associations”). The Debtor’s ability to provide merchants with access to and process merchant payment transactions with the Associations is vital to the Debtor’s ongoing business as an independent sales organization. In order to be in a position to accept and receive credit for purchases made with VISA or MasterCard credit cards, merchants must be a party to a merchant services agreement or similar agreement with a party that has access to the VISA/MasterCard payment and collection systems. DIP Lender currently is such a party that has access to the VISA/MasterCard payment and collections systems.

(c) Pursuant to the Processing Agreements (as defined below), among other things, DIP Lender (i) sponsors sales and credit transactions submitted by Debtor’s merchants whose customers use their VISA or MasterCard credit cards; (ii) sponsors Debtor into the Associations as an independent sales organization and establishes and maintains a dedicated segregated Association Bank Identification Number (BIN) and Interbank Card Association (ICA) for Debtor; (iii) and makes payment to VISA or MasterCard for fees, and then makes certain settlement payments to Debtor, subject to, among other things, DIP Lender’s rights of recoupment, retention, offset, and other rights

set forth in the Processing Agreements (as defined in the DIP Credit Documents). In addition, as detailed below, the Debtor has an immediate need to borrow funds and use Cash Collateral to maintain and continue operations and preserve the value of its business and assets. All such actions are vital to the Debtor's continuing operations.

(d) The Debtor acknowledges, ratifies, and reaffirms that as of the Petition Date, it is indebted to the DIP Lender under the Processing Agreements and Prepetition Credit Documents (both of which as defined below), including, without limitation, all principal, accrued interest, unpaid fees, and expenses (including attorneys' fees), without defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than \$6,176,681 as of July 31, 2014 (the "**Prepetition Obligations**") (provided however, that pending entry of the Final Order, the Debtor shall retain the right under the Existing Credit Agreement to review and contest estimated fees included within the afore-referenced amounts), plus any advances, loans, indemnification obligations, fees, forbearance fees, sponsorship fees and expenses (including attorneys' fees) made after that date until the Petition Date, in respect of loans and advances by or in favor of the DIP Lender pursuant to and in accordance with the terms of the following, all of which the Debtor ratifies:

(i) the ISO Agreement between DIP Lender and Debtor, dated May 31, 2005, and all related schedules attached thereto, the First Amendment to the ISO Agreement between DIP Lender and Debtor, dated June 1, 2010, and the Second Amendment to the ISO Agreement between Bancorp and Phoenix, dated November 31, 2011 (collectively, the "**ISO Agreement**");

(ii) the Processor Agreement between DIP Lender and Debtor, effective May 31, 2005, and the First Amendment to the Processor Agreement between DIP Lender and Debtor, dated June 1, 2010 (collectively, the "**Processor Agreement**");

(iii) the Sponsorship Agreement between DIP Lender and Debtor, dated May 31, 2005, the First Amendment to the Sponsorship Agreement between DIP Lender and Debtor, dated June 1, 2010, (collectively, the "**Sponsorship Agreement**");

(iv) the Originating Depository Financing Institution Agreement, dated June 15, 2007, between DIP Lender and Debtor (the “**ODFI Agreement**”) and collectively with the ISO Agreement, Processor Agreement and Sponsorship Agreement (the “**Processing Agreements**”);

(v) the financial accommodation letter from DIP Lender to Debtor accepted on April 11, 2012 and the exhibits thereto including that certain Security Agreement, dated April 11, 2012, between DIP Lender and Debtor, as amended on June 27, 2012, and any subsequent amendments (collectively, the “**Existing Credit Agreement**”);

(vi) the Acknowledgement of Debt and Forbearance Agreement, dated June 27, 2012, by and among the DIP Lender and Raymond Moyer, individually and as guarantor/surety, including (a) the Guaranty, dated June 27, 2012, by Debtor for the benefit of DIP Lender (the “**Guaranty**”) of Promissory Note and Home Equity Line of Credit Agreement (the “**2002 Credit Agreement**”) between DIP Lender, as lender, and Raymond Moyer, as borrower, dated October 9, 2002 and June 28, 2010 (the “**2010 Credit Agreement**” and (b) all other exhibits thereto and agreements therein (the “**Forbearance Agreement**”);

(vii) that certain Amendment to Forbearance Agreement, dated on or about February 8, 2013, by and among the DIP Lender, Debtor and Moyer (the “**First Amendment to Forbearance Agreement**”); and

(viii) that certain Further Acknowledgement of Debt and Second Forbearance Agreement, dated May 9, 2014, by and between DIP Lender and Debtor (the “**Second Forbearance Agreement**”, and together with the Forbearance Agreement and First Amendment the Forbearance Agreement, the “**Forbearance Agreements**”); and

(ix) the Agreement and Acknowledgement of Stock Pledge (the “**Acknowledgment**”), executed by the Debtor on April 11, 2011, with respect to the Stock Pledge and Security Agreement (the “**Stock Pledge**”), of even date, between DIP Lender and Moyer (the foregoing agreements, including the Forbearance Agreements, the Existing Credit Agreement and the Guaranty, Stock Pledge, and Acknowledgment (the “**Prepetition Credit Documents**”).

(e) Pursuant to the Prepetition Credit Documents and the Processing Agreements, Debtor granted to and for the benefit of DIP Lender, to secure the Prepetition Obligations, rights of offset and recoupment and liens and security interests (the “**Prepetition Liens**”), on and in all of the Prepetition Collateral. The Debtor has acknowledged and agreed, but for its bankruptcy, to duly perform all of its obligations under, and stay in full compliance with, the Processing Agreements and the Prepetition Credit Documents; except with respect to the Prepetition Credit Documents, except as

provided in Paragraph 5 of the Second Forbearance Agreement and as may have been amended, modified, and/or superseded by the DIP Facility.

(f) All of the above Prepetition Credit Documents and the Processing Agreements, which constitute the legal, valid and binding obligations of the Debtor, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (y) no portion of the Prepetition Obligations are subject to avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (z) the Debtor does not have, and hereby forever releases, any claims, counterclaims, causes of action, defenses or setoff rights, whether arising under the Bankruptcy Code or otherwise, against the DIP Lender and its affiliates, agents, officers, directors, employees and attorneys with respect to the Prepetition Obligations;

(g) The liens and security interests granted to the DIP Lender pursuant to and in connection with the Prepetition Obligations (including, without limitation, all security agreements, pledge agreements, deeds of trust and other security documents executed by the Debtor in favor of the DIP Lender) are (i) valid, binding, perfected, enforceable, liens and security interests in the property described in the Prepetition Credit Documents, (ii) not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (iii) subject and subordinate only to (x) the DIP Liens (as defined below), (y) the Carve Out and (z) the Senior Liens (together with the liens granted to the DIP Lender under the Prepetition Credit Documents, the "**Prepetition Liens**");

(h) The aggregate value of the Prepetition Collateral securing the Prepetition Obligations exceeds the aggregate amount of the Prepetition Obligations.

(i) The Debtor intends to restructure and market and sell Debtor's business in form and substance reasonably satisfactory to the DIP Lender and reach certain milestones including:

(i) within 25 days after the Petition Date, the Debtor shall have obtained from the Court an order approving bid procedures (the "**Bid Procedures Order**") with respect to the sale of the Debtor (the "**Sale**") in form and substance reasonably satisfactory to the DIP Lender;

(ii) an auction, if any, shall take place two days after the bid deadline set forth in the Bid Procedures Order, but in any event no later than 60 days after the Petition Date;

(iii) the Court shall have entered an order approving the Sale to the highest bidder within five days after the auction (if any) but in any event no later than 65 days after the Petition Date; and

(iv) the sale of the Debtor's assets shall close no later than 90 days after the Petition Date.

(j) Debtor will adhere to certain covenants including:

(i) weekly, not later than two (2) business days after the end of the week following the Petition Date and thereafter, by not later than two (2) business days after the close of each weekly period after the Petition Date, the Debtor shall deliver a variance and compliance report (the "**Compliance Report**"), in form and substance satisfactory to the DIP Lender and certified by the CRO of the Debtor, (i) setting forth (x) actual results against anticipated results under the Budget for the calendar week ending two days earlier on a line item basis and in the aggregate as of the end of such calendar week and (y) the variance in dollar amounts and percentages (including a report with detail reasonably satisfactory to the DIP Lender regarding any variance in excess of 10%) (collectively, "**Compliance**") and;

(ii) including a certification of the CRO as to the Debtor's compliance or non-compliance with the weekly cash flow covenants.

(iii) Debtor will comply with the Processing Agreements and Prepetition Credit Documents (except with respect to the Prepetition Credit Documents, except as provided in Paragraph 5 of the Second Forbearance Agreement and as may have been amended, modified, and/or superseded by the DIP Facility).

(iv) Debtor will reasonably cooperate with the DIP Lender and its counsel, advisors, appraisers, and professionals with respect to the implementation and enforcement of the agreements provided for hereunder.

(v) Debtor will continue to retain Michael Jacoby as CRO.

(vi) Debtor, along with the CRO, will consult with the DIP Lender with respect to the sale of assets and any other material non-ordinary course transactions, and other material matters related to the Debtor and the Case from time to time.

(vii) Subject to entry of the Final Order, other than in the ordinary course of business, the Debtor hereby waives its right to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Lender set forth in this Order or the DIP Facility. In no event shall the DIP Lender be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral. The DIP Lender's failure to seek relief or otherwise exercise its rights and remedies under the DIP Facility, the Prepetition Obligations and Prepetition Liens or this Order shall not constitute a waiver of the DIP Lender's rights hereunder, thereunder or otherwise.

(viii) The failure of the Debtor to comply with any of the above covenants (the "**Covenants**"), including use of cash collateral in amounts in excess of on a cumulative basis (x) up to 15% of any disbursement line-item, or (y) 10% in the aggregate for all cash disbursements (the "**Permitted Variance**") from the Budget, along with events of default delineated in the DIP Credit Documents and as provided in Paragraph 24 below, shall constitute an immediate event default ("**Event of Default**").

5. *Findings Regarding the DIP Facility.*

(a) Good cause has been shown for the entry of this Order.

(b) The Debtor has an immediate need to obtain the DIP Facility and use the Prepetition Collateral, including the Cash Collateral, in order to permit, among other things, the orderly continuation of the operation of its businesses, to maintain business relationships with merchants, to make payroll, to permit the continuation of operations through the Processing Agreements, including permitting the DIP Lender to set off or recoup amounts advanced under the Processing Agreements, permitting the Debtor and DIP Lender to continue to perform postposition under the Processing Agreements in their entirety, including authorizing the DIP Lender to withhold amounts in accordance with the Processing Agreements to the extent permitted thereunder, regardless of whether such amounts pertain to prepetition or postpetition transactions, to make capital expenditures, to satisfy other working capital and operational needs, to pay interest, fees and expenses in

accordance with this Order, to pay amounts approved by other order of this Court, to provide working capital for the Debtor, to make the adequate protection payments, and to fund an orderly sale process of the Debtor's assets. The Debtor's use of the Prepetition Collateral in general and access to the proceeds of the DIP Facility and the Cash Collateral specifically, is necessary in order to ensure that the Debtor has sufficient working capital and liquidity and can preserve and maintain its going concern value.

(c) The Debtor is unable to obtain financing on more favorable terms from sources other than the DIP Lender under the DIP Facility and is unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense or unsecured credit with the enhanced priority afforded by section 364(c)(1) of the Bankruptcy Code. The Debtor is also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtor granting to the DIP Lender, subject to the Carve Out as provided for herein, the DIP Liens (as defined below) and the Superpriority Claims (as defined below) under the terms and conditions set forth in this Order and in the DIP Facility.

(d) The extension of credit under the DIP Facility and the use of Cash Collateral are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The DIP Facility and use of Cash Collateral has been negotiated in good faith and at arm's length between the Debtor and the DIP Lender, and all of the Debtor's obligations and indebtedness arising under, in respect of or in connection with the DIP Facility, including without limitation, all loans made to the Debtor pursuant to the DIP

Facility (together with any other obligation arising under this Order with respect to the DIP Facility or the DIP Facility, collectively, the “**DIP Obligations**”) and the use of Cash Collateral (together with any other obligations arising under this Order with respect to the use of Cash Collateral), shall be deemed to have been extended by the DIP Lender in good faith, the DIP Lender’s consent to the Debtor’s use of Cash Collateral shall be deemed to have been in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) The Debtor has requested entry of this Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent granting the relief sought by this Order, the Debtor’s estate will be immediately and irreparably harmed. Consummation of the DIP Facility and the use of Cash Collateral in accordance with this Order and the DIP Facility are therefore in the best interest of the Debtor’s estate.

6. *Authorization of the DIP Facility.*

(a) The DIP Facility and Budget (subject to Permitted Variance as provided under the DIP Facility) is hereby approved as set forth in this Order and the Debtor is hereby authorized to borrow money pursuant to the DIP Facility and this Order, up to an aggregate principal or face amount of \$2,750,000 on an interim basis and, upon entry of the Final Order, up to an aggregate principal or face amount of \$5,000,000 (subject to availability under the DIP Credit Documents and to satisfaction or waiver of any conditions precedent set forth in the DIP Credit Documents), which funds shall be used for

all purposes permitted under the DIP Facility, in each case in accordance with the budget for the Case agreed upon by the Debtor and the DIP Lender (the "**Budget**"), a copy of which is attached hereto as Exhibit 2, subject to the Permitted Variance.

(b) In furtherance of the foregoing and without further approval of this Court, the Debtor is authorized to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, pledge agreements, mortgages, control agreements and financing statements) that may be reasonably required or necessary for the Debtor's performance of its obligations under the DIP Facility and the Prepetition Obligations, including, without limitation:

(i) the execution, delivery and performance of the DIP Credit Documents and any exhibits attached thereto, including, without limitation, the DIP Facility;

(ii) the execution, delivery and performance of one or more amendments to the DIP Facility, in each case in such form as the Debtor and the DIP Lender may agree (it being understood that no further approval of the Court shall be required for non-material amendments to the DIP Facility that, *inter alia*, do not shorten the maturity of the extensions of credit thereunder or increase the commitments, or the rate of interest payable thereunder; provided, however, that notice of any proposed non-material amendment to the DIP Facility shall be filed with this Court and served electronically upon counsel to the DIP Lender, counsel to any official committee(s) appointed in these cases, and the Office of the United States Trustee; provided further, that the aforementioned parties shall have five (5) days from the date of service to object to any such non-material amendment;

(iii) the payment to the DIP Lender, as the case may be, of the fees referred to in the DIP Facility and the Prepetition Credit Documents and the reasonable costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained as provided for in the DIP Credit Documents; and

(iv) the performance of all other acts required under or in connection with the DIP Credit Documents incident to relief that has been authorized by this Court.

(c) Upon execution and delivery of the DIP Facility, the DIP Facility shall constitute the valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with its terms. Without prejudice to any challenge rights expressly as

provided pursuant to paragraph 20 hereof, no obligation, payment, transfer or grant of security of, by and/or between the DIP Lender and/or the Debtor under the DIP Facility or this Order shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under section 502(d) of the Bankruptcy Code, under section 548 of the Bankruptcy Code or under any applicable State Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

(d) The DIP Lender is authorized in accordance with the Processing Agreements to advance, settle, withhold, setoff and recoup amounts in accordance with the Processing Agreements in accordance with the ordinary course of business and pursuant to past practices, regardless of whether such amounts pertain to prepetition or postpetition transactions. To the extent necessary, the DIP Lender is granted relief from the automatic stay to set off or recoup such amounts. Except as set forth in this Order, the liens, rights and priorities granted to, and obligations of, the DIP Lender under the Prepetition Credit Documents, shall continue postposition.

7. *Superpriority Claims.*

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed claims against the Debtor with priority over any and all administrative expenses, diminution claims (including all Adequate Protection Obligations (as defined below)) and all other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any

and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c) (upon entry of a final order providing for such relief), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (the “**Superpriority Claims**”), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all pre- and postpetition property of the Debtor and all proceeds thereof including, but not limited to, subject to entry of the Final Order, proceeds of causes of action and avoidance actions under chapter 5 of the Bankruptcy Code, subject only to the payment of the Carve Out to the extent specifically provided for herein below.

(b) For purposes hereof, the “**Carve Out**” means:

- (1) allowed administrative expenses pursuant to 28 U.S.C. § 1930(a)(6) in such amounts as determined in agreement with the United States Trustee or by final order of the Court and 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee (collectively, the “**U.S. Trustee Fees**”);
- (2) all accrued and unpaid fees, disbursements, costs and expenses, to the extent allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice, defined below, (“**Allowed Professional Expenses**”) and incurred by professionals retained by the Debtor or a statutory committee (a “**Committee**”), if any, (the “**Case Professionals**”), through the date of service by the DIP Lender of a Carve Out Trigger Notice (as defined below), as limited by the respective Budget amounts for each Case Professional or category of Case Professional through the date of service of said Carve Out Trigger Notice (including partial amounts for any Carve Out Trigger Notice given other than at the end of a week); and
- (3) all accrued and unpaid fees, disbursements, costs and expenses incurred by the Case Professionals after the date of service of a Carve Out Trigger Notice, to the extent allowed at any time, in an aggregate amount not to exceed \$150,000. The Carve-Out shall be reduced on a dollar-for-dollar basis by any payments of fees or

expenses of the Case Professionals incurred by such Case Professionals after the date of service of a Carve Out Trigger Notice. For purposes of the foregoing, “**Carve Out Trigger Notice**” shall mean a written notice delivered by the DIP Lender to the Debtor and its counsel, the U.S. Trustee, and lead and local counsel to any Committee, which notice may be delivered at any time following the occurrence and continuance, as applicable, of an event of default under the DIP Credit Documents. Delivery shall be deemed complete upon service. In no event shall any fees and expenses budgeted under this Order, be used by any person retained by or under a superseding chapter 7 proceeding, including, but not limited to under sections 326, 327, and 328 of the Bankruptcy Code.

8. *DIP Liens.*

As security for the DIP Obligations, effective and perfected immediately upon the date of this Order and without the necessity of the execution, recordation or filing by the Debtor of security agreements, control agreements, pledge agreements, mortgages, financing statements or other similar documents, the following security interests and liens are hereby granted to the DIP Lender (all property identified in clauses (a), (b) and (c) below being collectively referred to as the “**Collateral**”), subject to the payment of the Carve Out (all such liens and security interests granted to the DIP Lender, pursuant to this Order and the DIP Facility, the “**DIP Liens**”):

(a) Liens Priming Prepetition DIP Lender’s and Other Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interests in and lien upon the Collateral (as that term is defined in the DIP Facility), including but not limited to all pre- and postpetition assets and property of the Debtor, whether now existing or hereafter acquired, including, without limitation, accounts, inventory, equipment, capital stock in subsidiaries, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks, deposit accounts, intercompany claims, claims against

affiliates, avoidance actions (subject to entry of the Final Order), and other general intangibles, and all products and proceeds thereof, regardless whether such property is subject to the existing liens presently securing Debtor's obligations, including such obligations under the Existing Credit Agreement and obligations to Wollmuth Maher; provided, however, that pending entry of the Final Order, any valid, perfected and unavoidable Permitted Liens (as that term is defined in the DIP Facility) in existence immediately prior to the Petition Date, that, as of the Petition Date, are senior to the liens of the Lender securing the Prepetition Obligations, if any (the "Senior Liens") will not be primed pursuant to this subparagraph (a) and will instead be subject to subparagraph (c) below.

(b) First Lien on Unencumbered Property. In addition to such liens as provided for under "a" and "c" herein, pursuant to section 364(c)(2) of the Bankruptcy Code, a security interest in the Collateral that constitutes a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all of the Collateral, including, but not limited to all of the pre- and postpetition property of Borrower, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to valid, perfected and non-avoidable liens, including, without limitation, accounts, inventory, equipment, capital stock in subsidiaries, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks, deposit accounts, intercompany claims, claims against affiliates, avoidance actions (subject to entry of the Final Order), and other general intangibles, and all products and proceeds thereof (collectively, "**Unencumbered Property**").

(c) Liens Junior to Certain Other Liens. In addition to the liens provided for under “a” and “b” hereunder, pursuant to section 364(c)(3) of the Bankruptcy Code, a security interest in the Collateral that constitutes a valid, binding, continuing, enforceable, fully-perfected security interest in and liens upon all of the Collateral, including, but not limited to, all of the pre- and postpetition property of the Debtor (other than (i) the property described in clauses (a) or (b), as to which the liens and security interests in favor of the DIP Lender will be as described in such clauses), whether now existing or hereafter acquired, and such security interests and liens shall be junior to valid, perfect, and unavoidable Senior Liens in existence immediately prior to the Petition Date and to any valid and unavoidable Permitted Liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

(d) Liens Senior to Certain Other Liens. The DIP Liens and, subject to the reservation of rights contained in paragraph 20 of this Order, the Adequate Protection Liens (as defined below) shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code or (B) to the greatest extent permitted by Applicable Law, any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of any Debtor, or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 364 of the Bankruptcy Code or otherwise.

9. *Protection of DIP Lender's Rights.*

The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Lender to exercise, upon the occurrence of an Event Of Default and the giving of five (5) business days' prior written notice provided for in the DIP Facility, all rights and remedies under the DIP Facility. Subject to entry of the Final Order, the Debtor hereby waives its right to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Lender set forth in this Order or the DIP Facility. Subject to entry of the Final Order, in no event shall the DIP Lender be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral. The DIP Lender's failure to seek relief or otherwise exercise its rights and remedies under the DIP Facility, the Prepetition Secured Obligations or this Order shall not constitute a waiver of the DIP Lender's rights hereunder, thereunder or otherwise.

10. *Limitation on Charging Expenses Against Collateral.*

Upon entry of the Final Order providing for such relief, except to the extent of the Carve Out, no expenses of administration of the Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral, the Prepetition Collateral or the Replacement Collateral (as defined in paragraph 16(a) below), pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Lender as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender.

11. *Payments Free and Clear.* Subject to the right of third parties to bring an action by the Challenge Deadline set forth in paragraph 20, any and all payments or proceeds remitted to the DIP Lender pursuant to the provisions of this Order or any subsequent order of the Court shall be received free and clear of any claim, charge, assessment or other liability including, without limitation, upon entry of the Final Order, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) (whether asserted or assessed by, through or on behalf of the Debtor) or 552(b) of the Bankruptcy Code.

12. *Interest and Fees on DIP Obligations.* The Loan will bear interest at the prime rate plus two percent (2%). Interest will be payable monthly in arrears on the first day of each month. All interest will be calculated using a 360 day year and actual days elapsed. Upon the occurrence and during the continuance of an event of default under the DIP Facility, the obligations, following issuance of written notice from the DIP Lender, shall bear interest at a default rate of interest equal to an additional two percent (2%) per annum over the rate otherwise applicable and such interest will be payable on demand. The closing fee of \$75,000 and exit fee of \$75,000 (as well as any extension fee, as applicable) shall be paid upon Closing and Termination Date respectively as provided pursuant to the DIP Facility.

13. *Termination Date.* The earliest to occur of (i) ninety (90) days after the Petition Date and (ii) the closing date of a sale under section 363 of the Bankruptcy Code of all of, or substantially all of, the Debtor's assets (in a single transaction or a series of transactions), the sale of 50% of more of the Debtor's voting equity ownership (whether in a single transaction or a series of transactions), or a merger or consolidation having a similar effect, in an amount necessary to satisfy the DIP Obligations in full (such date, the "**Termination Date**"). Notwithstanding the foregoing, the Termination Date may be extended for a period of thirty (30)

days upon further written agreement of the DIP Lender and subject to payment of an extension fee in the amount of \$50,000.

14. *Control Agreements.* All deposit account control agreements or similar control agreement with the DIP Lender in effect as of the Petition Date, if any, shall remain in full force and effect notwithstanding the entry of the within DIP Facility and any orders of the Court regarding the grant of interim and final financing and use of cash collateral. The Debtor shall maintain all accounts at the DIP Lender and implement all such other cash management procedures as may be reasonably required by the DIP Lender, including lock box procedures and blocked account agreement that provide for full dominion and automatic daily sweeps into a collection account controlled by the DIP Lender.

15. *Use of Cash Collateral.* The Debtor hereby is authorized to use all Cash Collateral, *provided* that the DIP Lender is granted adequate protection as hereinafter set forth. The Debtor's right to use Cash Collateral under this Order shall terminate automatically upon the Termination Date, unless otherwise agreed in writing by the DIP Lender.

16. *Adequate Protection.* The DIP Lender is entitled, pursuant to sections 361, 363(c)(2) and 363(e) of the Bankruptcy Code, to adequate protection of its interest in the Prepetition Collateral, in an amount equal to the aggregate diminution in value of the DIP Lender's Prepetition Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtor (or other decline in value) of the Prepetition Collateral, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (such diminution in value, the "**Adequate Protection Obligations**"). As adequate protection, the DIP Lender is hereby granted the following:

(a) Adequate Protection Liens. The DIP Lender is hereby granted (effective and perfected upon the date of this Order and without the necessity of the execution by the Debtor of security agreements, pledge agreements, financing statements or other agreements), solely to the extent of the diminution in value of the Prepetition Collateral, a replacement security interest in and junior lien upon all the Collateral (the “**Adequate Protection Liens**”), of the same type and category in which it had Prepetition Liens (such collateral, the “**Replacement Collateral**”), and which Adequate Protection Liens shall be subject to disgorgement to the extent that Prepetition Liens are successfully challenged by third parties as set forth in paragraph 20 of this Order.

(b) Section 507(b) Claim. The DIP Lender is hereby granted, subject to the payment of the Carve Out, and to the extent of the diminution in value of the Prepetition Collateral, a superiority claim as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the claims under section 364(c)(1) of the Bankruptcy Code held by the DIP Lender; *provided, however*, and expressly subject to the DIP Lender’s rights to payment under paragraphs 6(d) and 16(c) herein, that the DIP Lender shall not receive or retain any payments, property or other amounts in respect of the superiority claims under section 507(b) of the Bankruptcy Code granted hereunder or under the Prepetition Credit Documents unless and until the DIP Obligations have indefeasibly been paid in cash in full.

(c) Cash Payments. Subject only to the rights of third parties to challenge the Prepetition Obligations and the Prepetition Liens as set forth in paragraph 20 of this Order, (i) immediate cash payment of \$1,500,000 to reduce the Prepetition Obligations, including to pay all accrued and unpaid fees, costs and disbursements owing to the prepetition DIP Lender under the Prepetition Credit Documents and incurred prior to

the Petition Date; (ii) immediate cash payment of all accrued and unpaid interest on the Prepetition Obligations, if any, at the respective rates provided for in the Prepetition Credit Documents, (iii) cash payment at closing of \$2,000,000 from the proceeds of sale of the business and assets to reduce Prepetition Obligations; and (iv) on the first business day of each month, all accrued but unpaid interest on the Prepetition Obligations, at the non-default contract rate applicable on the Petition Date under the Prepetition Credit Documents, *provided* that, without prejudice to the rights of any other party to contest any such assertion, (i) the prepetition DIP Lender reserves its rights to assert claims for the payment of additional interest calculated at any other applicable rate of interest (including, without limitation, default rates), or on any other basis, provided for in the Prepetition Credit Documents, and for the payment of any other amounts provided for in the Prepetition Credit Documents and (ii) the right of any party other than the Debtor to seek to recharacterize the payments of interest and all other accrued and unpaid fees and disbursements owing to the prepetition DIP Lender under the Prepetition Credit Documents and incurred prior to the Petition Date as principal in the event that a third party asserts a challenge by the Challenge Deadline in accordance with paragraph 20 of this Order.

(d) Fees and Expenses. Subject to section 506(b) of the Bankruptcy Code, the DIP Lender in its capacity as lender under the Prepetition Credit Documents shall receive from the Debtor current cash payments of all fees and expenses payable to the DIP Lender under the Prepetition Credit Documents, including, but not limited to, the reasonable fees and disbursements of counsel, financial and other consultants for the DIP Lender, the closing fee of \$75,000, and the exit fee of \$75,000 (as well as any extension fee, as applicable pursuant to paragraph 13 above). The Debtor shall reimburse the DIP

Lender for all such fees and expenses within ten (10) days of receipt of a copy of each invoice in the absence of a specific written objection to the reasonableness of the amounts contained in the subject invoice. Copies of such invoices shall also be timely provided to the U.S. Trustee and counsel for any official committee appointed in this Case.

17. *Reservation of Rights of DIP Lender for Prepetition Obligations.* Under the circumstances and given that the above described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the DIP Lender. However, the DIP Lender may request further or different adequate protection or other relief, and the Debtor or any other party in interest may contest any such request. Except as expressly provided herein, nothing contained in this Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to the DIP Lender. Notwithstanding anything contained herein or in the DIP Facility, the DIP Lender does not consent to the priming of its respective liens on property of the Debtor except as specifically set forth in this Order, and reserves the right to object to any other attempt to prime its respective liens on property of the Debtor in this case, including in connection with any alternatively proposed debtor in possession financing.

18. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) Subject to the provisions of paragraph 8 above, the DIP Lender hereby is authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction or take any other action in order to validate and perfect the liens and security interests granted to it hereunder. Whether or not the DIP Lender shall, in its sole discretion,

choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments or otherwise confirm perfection of the liens and security interests granted to it hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of this Order.

(b) A certified copy of this Order may, in the discretion of the DIP Lender, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Order for filing and recording.

(c) The Debtor shall execute and deliver to the DIP Lender all such agreements, security agreements, pledge agreements, control agreements, financing statements, mortgages, instruments and other documents as the DIP Lender may reasonably request to evidence, confirm, validate or perfect the DIP Liens and Adequate Protection Liens granted pursuant hereto.

19. *Preservation of Rights Granted Under the Order and Indemnity.* Subject to entry of the Final Order, a reserve, which shall be a Bancorp Retained Reserve under the Asset Purchase Agreement, shall be established at the closing of the sale by Debtor in the amount of \$2.5 million to satisfy any and all Indemnified Liabilities (the “**Indemnification Escrow**”). The Indemnification Escrow shall be held in escrow by the DIP Lender for a period of twenty-four months from the closing of the sale (the “**Escrow Termination Date**”); provided, however, that should the Challenge Period lapse without a claim or cause of action relating to the Indemnified Liabilities being timely commenced against an Indemnified Person by any creditor, interest

holder, Official Committee, and/or trustee (the “**Investigation Termination Date**”), the Indemnification Escrow shall be reduced to \$2,000,000 no later than three business days following the Investigation Termination Date. Any and all liabilities associated with the Enforcement Indemnity owing to any Indemnified Person shall be satisfied solely and exclusively from the Indemnification Escrow and not from any other assets of the Debtor (it being understood and agreed that nothing herein shall be deemed to cap the Debtor’s obligations to any Indemnified Person on account of the Indemnified Liabilities except with respect to liabilities relating to the Enforcement Indemnity, which shall be satisfied solely and exclusively from the Indemnification Escrow and not from any other assets of the Debtor). Any funds released from the Indemnification Escrow following the Investigation Termination Date or that remain in the Indemnification Escrow on the Escrow Termination Date shall be released to the Borrower and/or its bankruptcy estate.

(a) Unless all DIP Obligations shall have been paid in full and the Adequate Protection Obligations shall have been paid in full, it shall constitute a default and a termination of the right to use Cash Collateral and pursuant to the DIP Credit Documents, if there is entered: (i) any modifications or extensions of this Order without the prior written consent of the DIP Lender, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Lender; (ii) an order dismissing the Case; or (iii) an order converting the Case to a case under chapter 7 of the Bankruptcy Code. Notwithstanding the entry of any order dismissing the Case under section 1112 of the Bankruptcy Code or otherwise (in accordance with sections 105 and 349 of the Bankruptcy Code) (y) the priming liens, security interests and replacement security interests granted to the DIP Lender pursuant to this Order shall continue in full force and effect and shall

maintain their priorities as provided in this Order until all DIP Obligations and Adequate Protection Obligations shall have been paid and satisfied in full (and that such priming liens and replacement security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest) and (z) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the liens and security interests referred to in clause (y) above.

(b) If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect (i) the validity of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Lender of the effective date of such reversal, stay, modification or vacation or (ii) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Facility with respect to any DIP Obligations or Adequate Protection Obligations. Notwithstanding any such reversal, stay, modification or vacation, any use of Cash Collateral, or DIP Obligations or Adequate Protection Obligations incurred by the Debtor to the DIP Lender prior to the actual receipt of written notice by the DIP Lender as of the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Order, and the DIP Lender shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Order and pursuant to the DIP Facility with respect to all uses of Cash Collateral, DIP Obligations and Adequate Protection Obligations.

(c) Except as expressly provided in this Order or in the DIP Credit Documents, the DIP Liens, the Superpriority Claims and all other rights and remedies of

the DIP Lender granted by the provisions of this Order and the DIP Credit Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting the Case to a case under chapter 7, dismissing the Case (excepting the Superpriority Claims) or by any other act or omission, or (ii) the entry of an order confirming a plan of reorganization in the Case and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtor has waived any discharge as to any remaining DIP Obligations that are not addressed by the confirmation order. The terms and provisions of this Order and the DIP Credit Documents shall continue in this Case or in any superseding chapter 7 case under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims and all other rights and remedies of the DIP Lender granted by the provisions of this Order and the DIP Credit Documents shall continue in full force and effect in such case until the DIP Obligations are indefeasibly paid in full.

20. *Effect of Stipulations on Third Parties.* The stipulations and admissions contained in paragraph 4 of this Order, shall be binding upon the Debtor in all circumstances. The stipulations and admissions contained in paragraph 4 of this Order, shall be binding upon all creditors, equity holders, and other parties in interest, including, without limitation, any official committee appointed in this Case pursuant to section 1102 of the Bankruptcy Code, unless (a) such party in interest (including, for avoidance of doubt, a successor chapter 7 trustee or chapter 11 trustee) has filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in paragraph 22) by no later than the date that is the later of (i) for all parties in interest, 75 days after entry of this Order, or (ii) such later date (x) as has been agreed to, in writing, by the DIP Lender in its sole discretion or (y) as has been ordered by the Court (the “**Challenge Deadline**”), (1) challenging the amount, validity,

enforceability, priority or extent of the Prepetition Obligations or the Prepetition Liens on the Prepetition Collateral or (2) otherwise asserting or prosecuting any action for preferences, fraudulent conveyances, other avoidance power claims or any other any claims, counterclaims or causes of action, objections, contests or defenses that the Debtor's estate may have or any creditor, equity holder and other party in interest may directly have (collectively, "**Claims and Defenses**") against the DIP Lender or its affiliates, representatives, attorneys or advisors in connection with matters related to the Debtor, the Prepetition Credit Documents, Processing Agreements, the Prepetition Obligations, or the Prepetition Collateral, and (b) there is a final order in favor of the plaintiff sustaining any such challenge or claim in any such adversary proceeding or contested matter filed by the Challenge Deadline, *provided* that as to the Debtor, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date. If no such adversary proceeding or contested matter is filed by the Challenge Deadline, (x) Prepetition Obligations shall constitute Allowed Claims as that term is defined in the Bankruptcy Code, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes whatsoever, including in this Case and any subsequent chapter 7 case, (y) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding and perfected, not subject to recharacterization, subordination, avoidance or reduction, except by payment and (z) the Prepetition Obligations, the Prepetition Liens on the Prepetition Collateral and the DIP Lender shall not be subject to any other or further challenge by any party in interest with respect to the Claims and Defenses, including, without limitation, any successor to the Debtor (including, without limitation, any chapter 7 or 11 trustee appointed or elected for the Debtor). If any such adversary proceeding or contested matter is filed by the Challenge Deadline, the stipulations and admissions contained in

paragraph 4 of this Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any Committee and on any other person or entity, except to the extent that such findings and admissions were expressly challenged in such adversary proceeding or contested matter or any permitted amendment thereto, regardless of whether such amendment postdates the Challenge Deadline. Nothing in this Order vests or confers on any Person (as defined in the Bankruptcy Code), including any official committee appointed in the Case pursuant to section 1102 of the Bankruptcy Code, standing or authority to pursue any cause of action belonging to the Debtor or its estate, including, without limitation, Claims and Defenses with respect to the Prepetition Liens or the Prepetition Obligations. Notwithstanding anything to the contrary herein, if prior to the Challenge Deadline, the Case is converted to chapter 7 or a chapter 11 trustee is appointed, the Challenge Deadline shall be extended for such chapter 7 or chapter 11 trustee for an additional 75 days from the date of conversion of the Case to chapter 7 or the date of the appointment of the chapter 11 trustee, as applicable. Notwithstanding anything to the contrary herein, if prior to the Challenge Deadline, an official committee, if any, is formed, the Challenge Deadline solely with respect to any such committee, shall be extended for an additional 60 days from the date of formation of any such committee, if any.

21. *Waiver of Claims and Causes of Action Against the DIP Lender.* Without prejudice to the rights of any other party, including any official committee appointed in this Case, but subject to the limitations thereon contained in paragraph 20 above, the Debtor has waived any and all claims and causes of action against the DIP Lender, and its affiliates, directly related to the Prepetition Credit Documents, Processing Agreements, Prepetition Obligations, DIP Facility, DIP Credit Documents, and this Order, including, but not limited to with respect to

the negotiation and enforcement of the terms thereof, and irrespective of whether arising prior to or subsequent to the Petition Date.

22. *Limitation on Use of DIP Facility Proceeds and Collateral.* The Debtor shall use the proceeds of the DIP Facility and Cash Collateral solely as provided in this Order and in the DIP Credit Documents. No borrowings, letters of credit, Cash Collateral, Prepetition Collateral, Replacement Collateral, Collateral or the Carve Out may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under this Order, the DIP Facility or the Prepetition Credit Documents, or the liens or claims granted under this Order, the DIP Facility or the Prepetition Credit Documents, (b) assert any Claims and Defenses or causes of action against the DIP Lender, or its agents, affiliates, representatives, attorneys or advisors up to the Challenge Deadline Cap (as defined below), (c) prevent, hinder or otherwise delay the DIP Lender's assertion, enforcement or realization on the Cash Collateral or the Collateral in accordance with the DIP Facility, the Prepetition Credit Documents or this Order, (d) seek to modify any of the rights granted to the DIP Lender hereunder, or under the DIP Facility or the Prepetition Secured Credit Documents, in each foregoing case without such party's prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an Order of this Court or (ii) in accordance with the terms of the DIP Facility.

23. *Challenge Deadline Cap.* Notwithstanding the above, up to \$25,000 in the aggregate of the DIP Loan or Cash Collateral may be used by the Official Committee of Unsecured Creditors appointed in the Case (the "**Official Committee**") to investigate the Prepetition Liens and Prepetition Obligations (the "**Challenge Deadline Cap**").

24. *Events of Default.* The following shall constitute an Event of Default under the DIP Facility and this Order: (a) the failure to make payments when due; (b) noncompliance with covenants; (c) breaches of representations and warranties; (d) impairment of loan documentation or security; (e) material adverse change; (f) dismissal of the chapter 11 case or conversion to a chapter 7 case; (g) appointment of a chapter 11 trustee; (h) appointment of a responsible officer or examiner with enlarged powers relating to the operation of the business of any Borrower (excluding the CRO); (i) granting of relief from the automatic stay to permit foreclosure on assets of the Debtor, other than the granting of such relief to the DIP Lender following an Event of Default; (j) entry of an order granting any super-priority claim which is senior or *pari passu* with the DIP Lender's claims under the DIP Facility or the Existing Credit Agreement (other than the Carve Out); (k) amending, supplementing or otherwise modifying the Final DIP Order without the consent of the DIP Lender; (m) payment of or granting adequate protection with respect to pre-petition debt (other than as set forth in the Budget); (n) cessation of liens or super-priority claims granted with respect to the DIP Facility and Prepetition Obligations, to be valid, perfected and enforceable in all respects; (o) filing by the Debtor of a challenge to any of the liens securing obligations under the DIP Credit Agreement; (p) filing by the Debtor of a plan of reorganization that does not satisfy the DIP Obligations and Prepetition Obligations in full in cash; (q) or the payment of estate professional fees other than to the extent set forth in the Budget.

25. *Automatic Stay.* Upon the occurrence of an Event of Default, and after five (5) business days' prior written notice by electronic mail (deemed received upon transmittal) to the Debtor, the Official Committee and the United States Trustee, at the DIP Lender's election and without further order of the Court: (1) the DIP Lender shall have automatic and immediate relief

from the automatic stay with respect to the DIP Collateral (without regard to the passage of time provided for in Fed. R. Bankr. P. 4001(a)(3)) and shall be entitled to exercise all rights and remedies available to it under the Prepetition Credit Documents, the DIP Credit Documents and applicable nonbankruptcy law; and (2), subject to further agreement with respect to the funding of the Debtor's operations and the Case following an Event of Default, the Debtor shall reasonably cooperate with the DIP Lender in the exercise of its rights and remedies under the Prepetition Credit Documents, the DIP Credit Documents and applicable nonbankruptcy law. From and after the Termination Date, the DIP Lender shall have no obligation to make advances to the Debtor under the DIP Facility or otherwise.

26. *Insurance.* Pursuant to this Order, (i) the DIP Lender shall be and shall be deemed to be, without any further action or notice, named as an additional insured on each insurance policy maintained by the Debtor which in any way relates to the Collateral, and (ii) the DIP Lender, to the extent of its Adequate Protection Liens, shall be and shall be deemed to be, without any further action or notice, named as additional insured on each insurance policy maintained by the Debtor which in any way relates to the Replacement Collateral.

27. *Order Governs.* In the event of any inconsistency between the provisions of this Order and the DIP Facility, the provisions of this Order shall govern.

28. *Binding Effect; Successors and Assigns.* The DIP Credit Documents and the provisions of this Order, including all findings herein, shall be binding upon all parties in interest in this Case, including, without limitation, the DIP Lender, any Committee appointed in this Case, and the Debtor and its respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of the Debtor, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary hereafter

appointed as a legal representative of the Debtor or with respect to the property of the Debtor's estate) and shall inure to the benefit of the DIP Lender, the Debtor and each of their respective successors and assigns; *provided, however*, that the DIP Lender shall have no obligation to extend any financing to any chapter 7 or 11 trustee or similar responsible person appointed for the estate of any Debtor.

29. *Right of Access and Information.*

(a) The Debtor shall permit representatives, agents and/or employees of the DIP Lender to have reasonable access to its premises and its books and records during normal business hours (without unreasonable interference with the proper operation of the Debtor's businesses) at such reasonable times and reasonable intervals as DIP Lender may designate and, so long as no Default or Event of Default exists, with reasonable prior notice to the Debtor.

(b) Upon entry of the Final Order providing for such relief, and notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Lender contained in this Order or the DIP Credit Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Credit Documents, upon written notice to the landlord of any leased premises that a default has occurred and is continuing under the DIP Credit Documents, the DIP Lender may, subject to any separate agreement by and between such landlord and the DIP Lender, enter upon any leased premises of the Debtor for the purpose of exercising any remedy with respect to Collateral located thereon and shall be entitled to all of the applicable Debtor's rights and privileges as lessee under such lease without interference from the landlords thereunder, provided that the DIP Lender shall only pay rent and additional rent obligations of the

Debtor that first arise after the DIP Lender's written notice referenced above and that are payable during the period of such occupancy by the DIP Lender, calculated on a per diem basis. Upon entry of a final order providing for such relief, other than the payment obligation contained in this paragraph, the DIP Lender shall not be required to perform any of the Debtor's obligations under any lease as a condition to the rights afforded to the DIP Lender in this paragraph. Furthermore, upon entry of a final order providing for such relief, any title, landlord's lien, right of restraint or levy, security interest or other interest that any landlord or mortgagee may have in any Collateral of the Debtor located on such leased premises, to the extent the same is not void under section 545 of the Bankruptcy Code, may be expressly subordinated to the liens of the DIP Lender in such Collateral.

30. *Effectiveness.* This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof. The Debtor is authorized and directed to take such actions as reasonably required to effectuate the terms and provisions of this Order. The foregoing shall constitute the Order of the Court.

31. *Final Hearing.* The Final Hearing is scheduled for September 3, 2014 at 11:30 a.m. (ET) before this Court. The Debtor shall promptly mail copies of this Order (which shall constitute adequate notice of Final Hearing, including without limitation, notice that the Debtor will seek approval at the Final Hearing of a waiver of rights under section 506(c) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, to all landlords under the Debtor's unexpired leases, to all known secured creditors, and to any other party that has filed a request for notices with this Court and to any Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections; which

objections shall be served upon (a) Richards Layton & Finger, P.A. One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 Attn: Mark D. Collins), counsel to the Debtor; (b) Foley & Lardner LLP, 90 Park Avenue, New York, NY 10016 (Attn: Douglas Spelfogel and Richard Bernard), counsel to the DIP Lender; and (c) the Office of the United States Trustee for the District of Delaware, and shall be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, in each case to allow actual receipt by the foregoing no later than August 27, 2014 at 4:00 p.m., prevailing Eastern time.

Dated: August 5, 2014
Wilmington, Delaware



THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

[DIP Credit Agreement]

**SENIOR SECURED DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

by and between

PHOENIX PAYMENT SYSTEMS, INC.,

as Borrower,

and

THE BANCORP BANK,

as Lender

Dated as of July 31, 2014

TABLE OF CONTENTS

1. **DEFINITIONS AND CONSTRUCTION.** 5
 1.1 **Definitions, Code Terms, Accounting Terms and Construction** 5

2. **LOANS AND TERMS OF PAYMENT.**..... 5
 2.1 **Revolving Loan Advances**..... 5
 2.2 **Borrowing Procedures.** 5
 2.3 **Payments; Prepayments**..... 6
 2.4 **Interest Rates: Rates, Payments, and Calculations** 7
 2.5 **Designated Account** 8
 2.6 **Maintenance of Loan Account; Statements of Obligations** 8
 2.7 **Termination Date**..... 9
 2.8 **Effect of Maturity** 9
 2.9 **Termination or Reduction by Borrower** 9
 2.10 **Fees**..... 10
 2.11 **Capital Requirements** 10
 2.12 **Priority and Liens Applicable to Borrower** 10
 2.13 **No Discharge; Survival of Claims** 11

3. **SECURITY INTEREST.** 11
 3.1 **Grant of Security Interest**..... 12
 3.2 **Borrower Remains Liable**..... 12
 3.3 **Assignment of Insurance**..... 12
 3.4 **Financing Statements** 12
 3.5 **Existing Credit Agreement**..... 12

4. **CONDITIONS.** 13
 4.1 **Conditions Precedent to the Initial Extension of Credit**..... 13
 4.2 **Conditions Precedent to all Extensions of Credit**..... 13

5. **REPRESENTATIONS AND WARRANTIES.**..... 14

6. **AFFIRMATIVE COVENANTS.** 14
 6.1 **Financial Statements, Reports, Certificates** 14
 6.2 **Collateral Reporting**..... 14
 6.3 **Existence** 14
 6.4 **Maintenance of Properties**..... 14
 6.5 **Taxes** 14
 6.6 **Insurance** 15
 6.7 **Inspections, Exams, Audits and Appraisals** 15
 6.8 **Account Verification** 16
 6.9 **Compliance with Laws** 16
 6.10 **Environmental** 16
 6.11 **Disclosure Updates** 16
 6.12 **Collateral Covenants** 17
 6.13 **Material Contracts** 21
 6.14 **Location of Inventory and Equipment** 21
 6.15 **Further Assurances** 21
 6.16 **Material Licenses**..... 22
 6.17 **Payment of Post-Petition Obligations** 22

6.18	Intentionally Deleted	22
6.19	Budget Compliance	22
6.20	Cooperation	22
6.21	Chief Restructuring Officer	23
6.22	Sale of Assets	23
6.23	Cash Collateral	23
6.24	Bankruptcy Milestones	23
6.25	Adequate Protection	23
7.	NEGATIVE COVENANTS	23
7.1	Indebtedness	24
7.2	Liens	24
7.3	Restrictions on Fundamental Changes	24
7.4	Disposal of Assets	24
7.5	Change Name	24
7.6	Nature of Business	24
7.7	Prepayments and Amendments	24
7.8	Change of Control	25
7.9	Restricted Junior Payments	25
7.10	Accounting Methods	25
7.11	Investments; Controlled Investments	25
7.12	Transactions with Affiliates	25
7.13	Use of Proceeds	25
7.14	Margin Stock and Orders	26
7.15	Limitation on Issuance of Stock	26
7.16	Consignments	26
7.17	Inventory and Equipment with Bailees	26
7.18	Salaries and Other Compensation	27
7.19	Intentionally Omitted.....	27
7.20	Chapter 11 Claims	27
7.21	Repayment of Indebtedness	27
7.22	Burdensome Agreements	27
7.23	Financial Covenant	27
7.24	Reporting	27
8.	EVENTS OF DEFAULT	27
9.	RIGHTS AND REMEDIES	31
9.1	Rights and Remedies	31
9.2	Additional Rights and Remedies	32
9.3	Lender Appointed Attorney in Fact	33
9.4	Remedies Cumulative	34
9.5	Crediting of Payments and Proceeds	34
9.6	Marshaling	34
9.7	License	34
9.8	Waiver	35
10.	WAIVERS; INDEMNIFICATION	35
10.1	Demand; Protest; etc.	35
10.2	The Lender's Liability for Collateral	35
10.3	Indemnification	35

11. **NOTICES** 37

12. **CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER**..... 38

13. **ASSIGNMENTS; SUCCESSORS** 39

14. **AMENDMENTS; WAIVERS** 39

15. **TAXES**..... 40

16. **GENERAL PROVISIONS** 40

 16.1 **Effectiveness**..... 40

 16.2 **Section Headings**..... 40

 16.3 **Interpretation**..... 40

 16.4 **Severability of Provisions**..... 40

 16.5 **Debtor-Creditor Relationship** 40

 16.6 **Counterparts; Electronic Execution** 41

 16.7 **Revival and Reinstatement of Obligations** 41

 16.8 **Announcements**..... 41

 16.9 **Lender Expenses**..... 41

 16.10 **Setoff** 41

 16.11 **Survival**..... 41

 16.12 **Patriot Act**..... 42

 16.13 **Integration**..... 42

 16.14 **Bank Product Providers**..... 42

 16.15 **Waiver and Release** 42

- Schedule 1.1
- Schedule 3.5
- Schedule 6.1
- Schedule 6.2
- Exhibit A
- Exhibit B
- Exhibit C
- Exhibit D
- Exhibit E
- Schedule A-1
- Schedule A-2
- Schedule D-1
- Schedule P-1
- Schedule P-2

**SENIOR SECURED DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

THIS SENIOR SECURED DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT (this "Agreement"), is entered into as of July 31, 2014, by and between The Bancorp Bank ("Lender") and Phoenix Payment Systems, Inc. ("Borrower").

WHEREAS, on July 31, 2014 (the "Petition Date"), Borrower filed a voluntary petition with the Bankruptcy Court initiating a case under chapter 11 of the Bankruptcy Code and has continued in the possession of its assets and in the management of its businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code.

The parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 **Definitions, Code Terms, Accounting Terms and Construction.** Capitalized definitional terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1. Additionally, matters of (i) interpretation of terms defined in the Code, (ii) interpretation of accounting terms and (iii) construction are set forth in Schedule 1.1.

2. LOANS AND TERMS OF PAYMENT.

2.1 **Revolving Loan Advances.**

(a) Subject to the terms and conditions of this Agreement, and prior to the Termination Date, Lender agrees to make advances of the revolving loans ("Advances") to Borrower in an amount at any one time outstanding not to exceed the Maximum Revolver Amount.

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Advances, together with interest accrued and unpaid thereon, shall be due and payable on the Termination Date. Lender has no obligation to (i) make an Advance at any time following the occurrence and during the continuance of a Default or an Event of Default or on or after the Termination Date and (ii) make an Advance in an amount that would, when added to all other Advances, together with interest accrued and unpaid thereon, exceed the amount permitted pursuant to Section 2.1(a).

2.2 **Borrowing Procedures.**

(a) **Procedure for Borrowing.** Each Borrowing shall be made by delivery to Lender of a Borrowing Request by an Authorized Person. Such written request must be received by Lender no later than noon (Eastern Time) three (3) Business Day before the requested Funding Date specifying (i) the amount of such Borrowing, and (ii) the requested Funding Date, which shall be a Business Day. In lieu of delivering the above-described written request, any Authorized Person may give Lender telephonic notice of such request by the required time, followed promptly by such a written request. Lender is authorized to make

the Advances based upon telephonic or other instructions received from anyone purporting to be an Authorized Person;

(b) **Making of Loans.** Promptly after receipt of a request for a Borrowing pursuant to Section 2.2(a), Lender shall make the proceeds thereof available to Borrower on the applicable Funding Date by transferring immediately available funds equal to such amount to the Designated Account; provided, however, that, (i) Lender shall not have the obligation to make any Advance if (1) one or more of the applicable conditions precedent set forth in Section 4 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived by Lender, or (2) the requested Borrowing would exceed the Availability on such Funding Date and (ii) proceeds of the Borrowing shall be made available to Borrower by transferring immediately available funds equal to such amount to the Designated Account.

(c) **Protective Advances.** Lender may make an Advance for any reason at any time in its sole discretion, without Borrower's compliance with any of the conditions of this Agreement, and (i) disburse the proceeds directly to third Persons in order to protect Lender's interest in the Collateral or to perform any obligation of Borrower under this Agreement or any other Loan Document or otherwise to enhance the likelihood of repayment of the Obligations, or (ii) apply the proceeds to outstanding Obligations then due and payable to Lender (such Advance, a "Protective Advance").

2.3 Payments; Prepayments.

(a) **Payments by Borrower.** Except as otherwise expressly provided herein, all payments by Borrower shall be made to the Collection Account or to such other account as may be specified by Lender from time to time.

(b) **Payments by Account Debtors.** Promptly (and in any event within five (5) Business Days) prior to the opening of any new Lockbox, if any, Borrower shall instruct the Account Debtors of Borrower to make payments directly to the Lockbox for deposit by Lender to the Collection Account, or Borrower shall instruct them to deliver such payments to Lender by wire transfer, ACH, or other means as Lender may direct for deposit to the Lockbox or Collection Account or, subject to the Borrower's right to use Cash Collateral as provided herein and in the Orders, for direct application to reduce the outstanding Advances, as Lender shall determine in its sole discretion. To the extent that any Account Debtors of Borrower make payments directly to any lockbox other than a Lockbox, Borrower shall cooperate with Lender in causing all such funds to be wired directly to Lender on a daily basis for deposit to the Lockbox or Collection Account or, subject to the Borrower's right to use Cash Collateral as provided herein and in the Orders, for direct application to reduce the outstanding Advances, as Lender shall determine in its sole discretion. If Borrower receives a payment or the Proceeds of Collateral directly, Borrower will promptly deposit the payment or Proceeds into the Collection Account. Until so deposited, Borrower will hold all such payments and Proceeds in trust for Lender without commingling with other funds or property.

(c) **Crediting Payments.** For purposes of calculating Availability and the accrual of interest on outstanding Obligations, each payment shall be applied to the Obligations on the first Business Day following the Business Day of deposit to the Collection Account or other receipt by Lender provided such payment is received in accordance with Lender's usual and customary practices. Any payment received by Lender that is not a

transfer of immediately available funds shall be considered provisional until the item or items representing such payment have been finally paid under Applicable Law. Should any payment item not be honored when presented for payment, then Borrower shall be deemed not to have made such payment, and that portion of outstanding Obligations corresponding to the amount of such dishonored payment item shall be deemed to bear interest as if the dishonored payment item had never been received by Lender. Each reduction in outstanding Advances resulting from the application of such payment to the outstanding Advances shall be accompanied by an equal reduction in the amount of outstanding Accounts.

(d) **Application of Payments.** All Collections and all Proceeds of Collateral received by Lender shall be applied to reduce the Obligations in such manner as Lender shall determine in its sole discretion subject to Applicable Law. Following the occurrence and during the continuance of an Event of Default, Proceeds of Collateral and Collateral shall be applied by Lender in such manner as Lender shall determine in its sole discretion subject to Applicable Law. After payment in full in cash of all Obligations and termination of any commitment to provide Advances, any remaining balance shall be transferred to the Designated Account or otherwise as determined by the Borrower, subject to Applicable Law, in its sole discretion.

(e) **Mandatory Prepayments.** If, at any time, the Revolver Usage plus accrued interest exceeds (any such excess amount being referred to as the "Overadvance Amount") the Maximum Revolver Amount, then, at such time, Borrower shall immediately pay the Obligations in an aggregate amount equal to the Overadvance Amount. If Payment in Full of the outstanding revolving loans is insufficient to eliminate the Overadvance Amount, Borrower shall prepay such amount of the outstanding Obligations in an amount at least equal to such excess. Lender shall not be obligated to provide any Advances during any period that an Overadvance Amount is outstanding.

2.4 **Interest Rates: Rates, Payments, and Calculations.**

(a) **Interest Rates.** Except as provided in Section 2.4(b), the principal amount of all Obligations that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof at a per annum rate equal to the Interest Rate plus the applicable Interest Rate Margin.

(b) **Default Rate.** Upon the occurrence and during the continuation of an Event of Default and at any time following the Termination Date, upon written notice from Lender, the principal amount of all Obligations that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof at a per annum rate equal to two percentage points above the per annum rate otherwise applicable hereunder and shall be payable on demand.

(c) **Payment.** Except to the extent provided to the contrary in Section 2.10 or in the Orders, all interest, all fees payable hereunder or under any of the other Loan Documents, all costs and expenses payable hereunder or under any of the other Loan Documents, and all Lender Expenses shall be due and payable, in arrears, on the first Business Day of each month and on the Termination Date. Borrower hereby authorizes Lender, from time to time, subject to the terms of the Orders and subject to at least one (1) Business Day prior notice, to charge all interest, all fees payable hereunder or under any of the other Loan Documents (in each case, as and when due and payable), all costs and expenses payable hereunder or under any of the other Loan Documents (in each case, as and

when due and payable), all Lender Expenses (as and when due and payable), and all fees and costs provided for in Section 2.10 (as and when due and payable), and all other payment obligations as and when due and payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to any Bank Product Provider in respect of Bank Products) to the Loan Account, which amounts shall thereupon constitute Advances hereunder and, shall accrue interest at the rate then applicable to Advances. Any interest, fees, costs, expenses, Lender Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement that are charged to the Loan Account shall thereafter constitute Advances hereunder and shall accrue interest at the rate then applicable to Advances.

(d) **Computation.** All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue. In the event the Interest Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Interest Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Interest Rate.

(e) **Intent to Limit Charges to Maximum Lawful Rate.** In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrower and Lender, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under Applicable Law, then, as of the date of this Agreement, Borrower is and shall be liable only for the payment of such maximum amount as is allowed by law, and payment received from Borrower in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

2.5 **Designated Account.** Borrower agrees to establish and maintain one or more Designated Accounts, each in the name of Borrower, for the purpose of receiving the proceeds of the Advances requested by Borrower and made by Lender hereunder. Unless otherwise agreed by Lender and Borrower, any Advance requested by Borrower and made by Lender hereunder shall be made to the applicable Designated Account.

2.6 **Maintenance of Loan Account; Statements of Obligations.** Lender shall maintain an account on its books in the name of Borrower (the "Loan Account") in which will be recorded, all Advances made by Lender to Borrower or for Borrower's account and all other payment Obligations hereunder or under the other Loan Documents, including accrued interest, fees and expenses, and Lender Expenses. In accordance with Section 2.4, the Loan Account will be credited with all payments received by Lender from Borrower or for Borrower's account. All monthly statements delivered by Lender to Borrower regarding the Loan Account, including with respect to principal, interest, fees, and including an itemization of all charges and expenses constituting Lender Expenses owing, shall be subject to subsequent adjustment by Lender but shall, absent manifest error, be conclusively presumed to be correct and accurate and constitute an account stated between Borrower and Lender unless, within 30 days after receipt thereof by Borrower, Borrower shall deliver to Lender written objection thereto describing the error or errors contained in any such statements.

2.7 **Termination Date.** Lender's obligations under this Agreement shall continue in full force and effect for a term ending on the earliest of (i) ninety (90) days after the Petition Date, (ii) the closing of a sale under section 363 of the Bankruptcy Code of a portion of, or substantially all of, Borrower's assets (in a single transaction or series of transactions), a sale of fifty percent (50%) or more of the Debtor's voting equity ownership (whether in a single transaction or series of transactions), or a merger or consolidation having a similar effect, the Proceeds of which are at least equal to the amount necessary to satisfy the Obligations in full, (iii) the date Borrower terminates the Revolving Credit Facility, and (iv) the date the Revolving Credit Facility terminates pursuant to Section 9.1 or Section 9.2 following an Event of Default (the earliest of these dates, the "Termination Date"). Notwithstanding the foregoing, the Termination Date may be extended, at Lender's sole discretion, for a period of thirty days upon further written agreement of Lender and subject to the payment of the extension fee set forth in Section 2.10. The foregoing notwithstanding, Lender shall have the right to terminate its obligations under this Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default. Borrower promises to pay the Obligations (including principal, interest, fees, costs, and expenses, including Lender Expenses) in full on the Termination Date. From and after the Termination Date, the Lender shall have no obligation to make Advances under the Agreement to Borrower.

2.8 **Effect of Maturity.** On the Termination Date, all obligations of Lender to provide additional credit hereunder shall automatically be terminated and all of the Obligations shall immediately become due and payable in full in cash without notice or demand and Borrower shall immediately repay all of such Obligations in full. No termination of the obligations of Lender (other than cash payment in full of the Obligations and termination of the obligations of Lender to provide additional credit hereunder) shall relieve or discharge Borrower of its duties, obligations, or covenants hereunder or under any other Loan Document and Lender's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full in cash and Lender's obligations to provide additional credit hereunder shall have been terminated. Subject to the terms and limitations set forth in Section 10.3 below, provided that there are no suits, actions, proceedings or claims pending or threatened against any Indemnified Person under this Agreement with respect to any Indemnified Liabilities, Lender shall, at Borrower's expense, release or terminate (or authorize Borrower or its designee to release or terminate) any filings or other agreements that perfect the Security Interest, upon Lender's receipt of each of the following, in form and content satisfactory to Lender: (i) cash payment in full of all Obligations and completed performance by Borrower with respect to all its other obligations under this Agreement, (ii) evidence that any obligation of Lender to make Advances to Borrower or provide any further credit to Borrower has been terminated, (iii) confirmation that the indemnity obligations set forth in Section 10.3 above remain in full force and effect, and (iv) the establishment and funding of the Indemnification Escrow.

2.9 **Termination or Reduction by Borrower.** Borrower may terminate the Revolving Credit Facility or reduce the Maximum Revolver Amount in whole or in part at any time prior to the Termination Date, if Borrower (i) delivers a notice to Lender of its intentions at least five (5) Business Days prior to the proposed action and (ii) pays the Obligations in full or down to the reduced Maximum Revolver Amount, as applicable. Any reduction in the Maximum Revolver Amount shall be in multiples of \$500,000, with a minimum reduction of at least \$1,000,000. Each such termination, reduction or prepayment shall be irrevocable. Once reduced, the Maximum Revolver Amount may not be increased.

2.10 **Fees.** Borrower shall pay to Lender the non-refundable fees set forth below:

- (a) **Closing Fee.** On the Closing Date, Borrower shall pay to Lender a closing fee in the amount of seventy-five thousand dollars (\$75,000.00).
- (b) **Exit Fee.** On the Termination Date, Borrower shall pay to Lender an exit fee in the amount of seventy-five thousand dollars (\$75,000.00).
- (c) **Extension Fee.** If Lender agrees to extend the Termination Date pursuant to Section 2.7, Borrower shall pay to Lender an extension fee in the amount of fifty thousand dollars (\$50,000.00) on the date which Lender so agrees.
- (d) **Existing Credit Agreement.** All other undisputed fees outstanding under the Existing Credit Agreement.

2.11 **Capital Requirements.** If, after the date hereof, Lender determines that (i) the adoption after the date hereof of or change after the date hereof in any law, rule, regulation or guideline regarding capital or reserve requirements for banks or bank holding companies, or any change after the date hereof in the interpretation, implementation, or application thereof by any Governmental Authority charged with the administration thereof, including those changes resulting from the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Basel III, regardless of the date enacted, adopted or issued, or (ii) compliance by Lender or its parent bank holding company with any guideline, request or directive of any such entity regarding capital adequacy (whether or not having the force of law) issued after the date hereof has the effect of reducing the return on Lender's or such holding company's capital as a consequence of Lender's loan commitments hereunder to a level below that which such Lender or such holding company could have achieved but for such adoption, change, or compliance (taking into consideration such Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by Lender to be material, then Lender may notify Borrower thereof. Following receipt of such notice, Borrower agrees to pay Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 30 days of demand therefor by Lender. In determining such amount, Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of Lender to demand compensation pursuant to this Section shall not constitute a waiver of Lender's right to demand such compensation; provided that Borrower shall not be required to compensate Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that Lender demands compensation from Borrower in respect of such law, rule, regulation or guideline giving rise to such reductions; provided further that if such claim arises by reason of the adoption of or change in any law, rule, regulation or guideline that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

2.12 **Priority and Liens Applicable to Borrower.** Borrower hereby covenants, represents and warrants that, upon the execution of this Agreement subject to the entry of the Interim Order (and when applicable, the Final Order), the Obligations of Borrower:

- (a) pursuant to section 364(c)(1) of the Bankruptcy Code, shall at all times constitute a Superpriority Claim in the Case;

(b) pursuant to section 364(c)(2) of the Bankruptcy Code, shall at all times be secured by a security interest in the Collateral that constitutes a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all of the Collateral, including, but not limited to all of the pre- and postpetition property of Borrower, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to valid, perfected and non-avoidable liens, including, without limitation, accounts, inventory, equipment, capital stock in subsidiaries, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks, deposit accounts, intercompany claims, claims against affiliates, avoidance actions (subject to entry of the Final Order), and other general intangibles, and all products and proceeds thereof;

(c) pursuant to section 364(d)(1) of the Bankruptcy Code, shall at all times be secured by a security interest in the Collateral that constitutes a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all of the Collateral, including, but not limited to all of the pre- and postpetition assets of the Debtor, whether now existing or hereafter acquired, including, without limitation, accounts, inventory, equipment, capital stock in subsidiaries, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks, deposit accounts, intercompany claims, claims against affiliates, avoidance actions (subject to entry of the Final Order), and other general intangibles, and all products and proceeds thereof, regardless whether such property is subject to the existing liens presently securing Debtor's obligations, including such obligations under the Existing Credit Agreement and obligations to Wollmuth Maher; provided, however, that pending entry of the Final Order, any valid, perfected and unavoidable Permitted Liens in existence immediately prior to the Petition Date, that, as of the Petition Date, are senior to the liens of the Lender securing the Prepetition Obligations, if any (the "Senior Liens") will not be primed pursuant to this subparagraph (c) and will instead be subject to subparagraph (d) below;

(d) pursuant to section 364(c)(3) of the Bankruptcy Code, shall at all times be secured by a security interest in the Collateral that constitutes a valid, binding, continuing, enforceable, fully-perfected security interest in and liens upon all of the Collateral, including, but not limited to, all of the pre- and postpetition property of the Debtor (other than (i) the property described in clauses (b) or (c) of this Section 2.12, as to which the liens and security interests in favor of the DIP Lender will be as described in such clauses), whether now existing or hereafter acquired, and such security interests and liens shall be junior to Senior Liens and to any valid and unavoidable Permitted Liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

2.13 **No Discharge; Survival of Claims.** Borrower agrees that (a) its Obligations hereunder shall not be discharged by the entry of an order confirming a Reorganization Plan (and Borrower, pursuant to section 1141(d)(4) of the Bankruptcy Code, hereby releases and waives such discharge) and (b) the Superpriority Claim granted to Lender pursuant to the Orders and described in Section 2.12(a) and the Liens granted to Lender pursuant to the Orders and described in Sections 2.12(b), (c) and (d) shall not be affected in any manner by the entry of an order confirming a Reorganization Plan other than the discharge and release of such Liens and upon the Payment in Full of the Obligations as provided herein.

3. SECURITY INTEREST.

3.1 **Grant of Security Interest.** Subject to the Orders, as applicable, Borrower hereby unconditionally grants, assigns, and pledges to Lender for the benefit of Lender and each Bank Product Provider, to secure payment and performance of the Obligations, a continuing security interest (hereinafter referred to as the "Security Interest") in all of its pre-Petition Date and post-Petition Date right, title, and interest in and to the Collateral. The Security Interest created hereby secures the payment and performance of the Obligations, whether now existing or arising hereafter.

3.2 **Borrower Remains Liable.** Anything herein to the contrary notwithstanding, (a) Borrower shall remain liable under the contracts and agreements included in the Collateral to perform all of the duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by Lender of any of the rights hereunder shall not release Borrower from any of its duties or obligations under such contracts and agreements included in the Collateral, and (c) Lender shall not have any obligation or liability under such contracts and agreements included in the Collateral by reason of this Agreement, nor shall Lender be obligated to perform any of the obligations or duties of Borrower thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

3.3 **Assignment of Insurance.** As additional security for the Obligations, Borrower hereby assigns as security to Lender for the benefit of Lender and each Bank Product Provider all rights of Borrower under every policy of insurance (other than insurance related to directors' and officers' liability) covering the Collateral (including, without limitation, business interruption insurance and proceeds thereof) and all business records and other documents relating to it, and all monies (including proceeds and refunds) that may be payable under any policy, and Borrower hereby directs the issuer of each policy after an Event of Default to pay all such monies directly and solely to Lender. If an Event of Default shall have occurred and be continuing, Lender may (but need not), in Lender's or Borrower's name, execute and deliver proofs of claim, receive payment of proceeds and endorse checks and other instruments representing payment of the policy of insurance. After an Event of Default, any monies received under any insurance policy assigned as security to Lender, other than liability insurance policies, or received as payment of any award or compensation for condemnation or taking by eminent domain, shall be paid to Lender and, as determined by Lender in its sole discretion, either be applied to prepayment of the Obligations or disbursed to Borrower under payment terms reasonably satisfactory to Lender for application to the cost of repairs, replacements, or restorations of the affected Collateral which shall be effected with reasonable promptness and shall be of a value at least equal to the value of the items or property destroyed.

3.4 **Financing Statements.** Subject to the Orders, as applicable, Borrower authorizes Lender to file financing statements describing Collateral to evidence the perfection of Lender's Security Interest in the Collateral, and Lender may describe the Collateral as "all personal property" or "all assets" or describe specific items of Collateral including without limitation any Commercial Tort Claims. All financing statements filed before the date of this Agreement to perfect the Security Interest were authorized by Borrower and are hereby ratified. Pursuant to the Orders, Lender shall be under no obligation to file any financing statement to perfect its Liens.

3.5 **Existing Credit Agreement.** Borrower acknowledges and agrees that Lender holds a valid, fully enforceable, properly perfected, and unavoidable and, subject to the terms of this Agreement and the Orders, first-priority security interest in the Collateral (as defined in the Existing Credit Agreement) securing the Prepetition Obligations. Borrower shall

execute a reaffirmation, acknowledgement of debt and ratification agreement in form satisfactory to Lender and annexed hereto as Schedule 3.5.

4. **CONDITIONS.**

4.1 **Conditions Precedent to the Initial Extension of Credit.** The obligation of Lender to make the initial extension of credit provided for hereunder is subject to the fulfillment, to the satisfaction of Lender, of each of the conditions precedent set forth on Exhibit B and the receipt by Lender of a draw certificate in form and substance satisfactory to Lender, certifying, among other things, that the conditions set forth in Exhibit B have been satisfied.

4.2 **Conditions Precedent to all Extensions of Credit.** The obligation of Lender to make any Advances hereunder (or to extend any other credit hereunder) at any time shall be subject to the following conditions precedent:

(a) no Default or Event of Default shall have occurred and be continuing on the date of such Advance (or other extension of credit), nor shall either result from the making thereof;

(b) the representations and warranties of Borrower contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects immediately prior to, and after giving effect to, such Advance (or other extension of credit), except that any such materiality qualifier shall not apply to any representation or warranty that is already qualified or modified by materiality in the text thereof (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall continue to be true and correct in all material respects as of such earlier date);

(c) the making of such Advance shall not violate any Applicable Law and shall not be enjoined, temporarily, preliminarily or permanently;

(d) the Bankruptcy Court shall have entered the Interim Order substantially in form attached hereto without material modification (including, the grant of Adequate Protection and to pay down in the amount of \$1.5 million of the outstanding balance under the Existing Credit Agreement, as provided for pursuant to Paragraph 7.13 under this Agreement), and such Interim Order shall be in effect, not have been stayed or otherwise subject to appeal and not have been amended or modified without the written consent of the Lender;

(e) if the proposed funding date is more than 35 days after Petition Date, the Bankruptcy Court shall have entered the Final Order and such Final Order shall be in effect, not have been stayed or otherwise subject to appeal and not have been amended or modified without the written consent of the Lender; and

(f) Lender shall have received a draw certificate in form and substance satisfactory to Lender, certifying, among other things, that the conditions set forth in Section 4.2 have been satisfied.

Any request for an extension of credit shall be deemed to be a representation by Borrower that the statements set forth in this Section 4.2 are correct as of the time of such request and if

such extension of credit is a request for an Advance, sufficient Availability exists for such Advance pursuant to Section 2.1.

5. REPRESENTATIONS AND WARRANTIES.

In order to induce Lender to enter into this Agreement, Borrower makes the representations and warranties to Lender set forth on Exhibit C. Each of such representations and warranties shall be true, correct, and complete as of the Closing Date, and shall be true, correct, and complete as of the date of the making of each Advance or other extension of credit made thereafter, as though made on and as of the date of such Advance or other extension of credit (except to the extent that such representations and warranties relate solely to an earlier date in which case such representations and warranties shall continue to be true and correct in all material respects as of such earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement.

6. AFFIRMATIVE COVENANTS.

Borrower covenants and agrees that until Payment in Full of the Obligations, Borrower shall comply with each of the following:

6.1 **Financial Statements, Reports, Certificates.** Deliver to Lender copies of each of the financial statements, reports, and other items set forth on Schedule 6.1 no later than the times specified therein. Borrower agrees to maintain a system of accounting that enables it to produce financial statements in accordance with GAAP. Borrower shall maintain its billing systems/practices substantially as in effect as of the Closing Date and shall only make material modifications following prior notice to and consent of Lender.

6.2 **Collateral Reporting.** Provide Lender with each of the reports set forth on Schedule 6.2 at the times specified therein. In addition, Borrower agrees to use commercially reasonable efforts in cooperation with Lender to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule.

6.3 **Existence.** Except as otherwise permitted under Section 7.3 or Section 7.4, at all times maintain and preserve in full force and effect (a) its existence (including being in good standing in its jurisdiction of organization) and (b) all rights and franchises, licenses and permits material to its business.

6.4 **Maintenance of Properties.** Maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear and casualty excepted and Permitted Dispositions excepted, and comply with the provisions of all material leases to which it is a party as lessee, so as to prevent the loss or forfeiture thereof, unless such provisions are the subject of a Permitted Protest.

6.5 **Taxes.**

(a) Cause all assessments and taxes imposed, levied, or assessed against Borrower, or any of their respective assets or in respect of any of its income, businesses, or franchises to be paid in full, before delinquency or before the expiration of any extension period, except to the extent that the validity of such assessment or tax shall be the subject of a Permitted Protest and so long as, in the case of an assessment or tax that has or may become a

Lien against any of the Collateral, (i) such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such assessment or tax, and (ii) any such other Lien is at all times subordinate to Lender's Liens.

(b) Make timely payment or deposit of all tax payments and withholding taxes required of it by Applicable Laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Lender with proof reasonably satisfactory to Lender indicating that Borrower has made such payments or deposits.

6.6 **Insurance.** At Borrower's expense, maintain insurance with respect to the assets of Borrower, wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. Borrower also shall maintain, with respect to itself, business interruption insurance, general liability insurance, flood insurance for Collateral located in a flood plain, product liability insurance, director's and officer's liability insurance, fiduciary liability insurance and employment practices liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation. All such policies of insurance shall be with responsible and reputable insurance companies acceptable to Lender and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event in amount, adequacy and scope reasonably satisfactory to Lender. All property insurance policies covering the Collateral are to be made payable to Lender for the benefit of Lender, as its interests may appear, in case of loss, pursuant to a lender loss payable endorsement reasonably acceptable to Lender and are to contain such other provisions as Lender may reasonably require to fully protect Lender's interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Lender, with the lender loss payable (but only in respect of Collateral) and additional insured endorsements (with respect to general liability coverage) in favor of Lender and shall provide for not less than 30 days (10 days in the case of non-payment) prior written notice to Lender of the exercise of any right of cancellation. If Borrower fails to maintain such insurance, Lender may arrange for such insurance, but at Borrower's expense and without any responsibility on Lender's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Borrower shall give Lender prompt notice of any loss exceeding \$50,000 covered by such casualty or business interruption insurance. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right (but no obligation) to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

6.7 **Inspections, Exams, Audits and Appraisals.** Provide Lender and each of Lender's duly authorized representatives or agents with reasonable access to its books and records at such reasonable times and reasonable intervals as Lender may designate and, so long as no Default or Event of Default exists, with reasonable prior notice to Borrower and keep Lender apprised of any material change in circumstances and transactions that may be considered to be outside the ordinary course of business or otherwise proscribed under this Agreement. In addition, Borrower acknowledges and agrees that it shall permit Lender and

each of Lender's duly authorized representatives or agents to have reasonable access onto Borrower's premises and view-only access to Borrower's Quickbooks accounting systems during normal business hours for review of accounts and agreements, and employees and representatives of Borrower shall comply with all reasonable requests made by such representatives or agents of Lender. Borrower shall also permit Lender and each of Lender's duly authorized representatives or agents to visit any of its properties to conduct inspections, exams, audits and appraisals of the Collateral and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and reasonable intervals as Lender may designate and, so long as no Default or Event of Default exists, with reasonable prior notice to Borrower.

6.8 **Account Verification.** Permit Lender, in Lender's name or in the name of a nominee of Lender, to verify the validity, amount or any other matter relating to any Account, by mail, telephone, facsimile transmission or otherwise. Further, at the request of Lender and following an Event of Default, Borrower shall send requests for verification of Accounts or send notices of assignment of Accounts to Account Debtors and other obligors.

6.9 **Compliance with Laws.** Comply in all material respects with the requirements of all Applicable Laws, rules, regulations, and orders of any Governmental Authority.

6.10 **Environmental.**

(a) Keep any property either owned or operated by Borrower free of any Environmental Liens or post bonds or other financial assurances satisfactory to Lender and in an amount sufficient to satisfy the obligations or liability evidenced by such Environmental Liens;

(b) Comply, in all material respects, with Environmental Laws and provide to Lender documentation of such compliance which Lender reasonably requests; and

(c) Promptly notify Lender of any release of which Borrower has knowledge of a Hazardous Material in any reportable quantity from or onto the property owned or operated by Borrower and take any Remedial Actions required to abate said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law related to such release; and

(d) Promptly, but in any event within five (5) Business Days of its receipt thereof, provide Lender with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of Borrower, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against Borrower, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority regarding any Environmental Law.

6.11 **Disclosure Updates.**

(a) Promptly and in no event later than two (2) Business Days after the CRO obtains knowledge thereof, notify Lender:

(i) if any written information, exhibit, or report furnished to Lender hereunder in connection with this Agreement contained, at the time it was furnished,

any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made. Any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto;

(ii) of all actions, suits, or proceedings brought by or against Borrower before any court or Governmental Authority; provided that, in any event, such notification shall not be later than two (2) Business Days after service of process with respect thereto on Borrower;

(iii) of any disputes or claims by Borrower's customers outside of the ordinary course of business exceeding \$20,000 individually or \$50,000 in the aggregate during any Fiscal Year;

(iv) of any material loss or damage to any Collateral or any substantial adverse change in the Collateral;

(v) of a material violation of any law, rule or regulation;

(vi) of the occurrence of any ERISA Event; or

(vii) the filing or commencement of any material action, suit or proceeding with respect to any Lease.

(b) Promptly and in no event later than two Business Days after an officer of Borrower obtains knowledge thereof, notify Lender of any event or condition which constitutes a Default or an Event of Default and provide a statement of the action that Borrower proposes to take with respect to such Default or Event of Default.

(c) Promptly in advance of filing with the Bankruptcy Court or delivering to the Official Committee or to the U.S. Trustee, as the case may be, deliver to Lender all proposed orders and pleadings related to the Obligations and the Loan Documents, any Reorganization Plan and/or any disclosure statement related thereto.

Upon request of Lender, Borrower shall deliver to Lender any other materials, reports, records or information reasonably requested relating to the operations, business affairs or financial condition of Borrower or any Collateral or the Case.

6.12 **Collateral Covenants.** Comply with each of the following covenants.

(a) **Possession of Collateral.** In the event that any Collateral, including Proceeds, is evidenced by or consists of Negotiable Collateral, Investment Related Property, or Chattel Paper, Borrower shall promptly (and in any event within five (5) Business Days after receipt thereof), notify Lender thereof, and if and to the extent that perfection or priority of Lender's Security Interest is dependent on or enhanced by possession, Borrower, promptly (and in any event within five (5) Business Days) after request by Lender, shall execute such other documents and instruments as shall be requested by Lender or, if applicable, endorse and deliver physical possession of such Negotiable Collateral, Investment Related Property, or Chattel Paper to Lender, together with such undated powers (or other relevant document of

assignment or transfer acceptable to Lender) endorsed in blank as shall be requested by Lender, and shall do such other acts or things deemed necessary or desirable by Lender to enhance, perfect and protect Lender's Security Interest therein;

(b) **Chattel Paper.**

(i) Promptly (and in any event within five (5) Business Days) after request by Lender, Borrower shall take all steps reasonably necessary to grant Lender control of all electronic Chattel Paper of Borrower in accordance with the Code and all "transferable records" as that term is defined in Section 16 of the Uniform Electronic Transaction Act and Section 201 of the federal Electronic Signatures in Global and National Commerce Act as in effect in any relevant jurisdiction;

(ii) If Borrower retains possession of any Chattel Paper or instruments (which retention of possession shall be subject to the extent permitted hereby), promptly upon the request of Lender, such Chattel Paper and instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the Security Interest of The Bancorp Bank as Lender";

(c) **Control Agreements.**

(i) Any Control Agreements with Lender in effect as of the Petition Date shall remain in full force and effect notwithstanding the entry of this Agreement and any orders of the Bankruptcy Court regarding the grant of interim and final financing and use of cash Collateral. Except to the extent otherwise provided in Section 7.11, Borrower shall obtain a Control Agreement for each Deposit Account. Borrower has no Deposit Accounts, and shall not have any Deposit Accounts, other than those maintained with Lender.

(ii) Except to the extent otherwise provided in Section 7.11, Borrower shall obtain a Control Agreement from each issuer of uncertificated securities, securities intermediary, or commodities intermediary issuing or holding any financial assets or commodities to or for Borrower;

(iii) Except to the extent otherwise provided in Section 7.11, Borrower shall cause Lender to obtain "control", as such term is defined in the Code, with respect to all of the investment property of Borrower;

(iv) Except to the extent otherwise provided in Section 7.11, Borrower shall at all times cause all cash and Cash Equivalents of Borrower (including proceeds of any Collateral) to be immediately deposited in Deposit Accounts subject to a Control Agreement in favor of Lender;

(v) Notwithstanding any provision hereof to the contrary, Lender may in its sole discretion elect not to obtain a Control Agreement with respect to one or more Deposit Accounts, but such election shall not impair Lender's right to require one at any time.

(d) **Letter-of-Credit Rights.** If Borrower is or becomes the beneficiary of letters of credit, then Borrower shall promptly (and in any event within five (5) Business Days after becoming a beneficiary), notify Lender thereof and, promptly (and in any event within two (2) Business Days) after request by Lender, enter into a tri-party agreement with

Lender and the issuer or confirming bank with respect to letter-of-credit rights assigning such letter-of-credit rights to Lender and directing all payments thereunder to the Collection Account, all in form and substance reasonably satisfactory to Lender;

(e) **Commercial Tort Claims.** If Borrower determines to assert any Commercial Tort Claims, then Borrower shall promptly (and in any event within five (5) Business Days of obtaining such Commercial Tort Claim), notify Lender upon incurring or otherwise obtaining such Commercial Tort Claims and, promptly (and in any event within two (2) Business Days) after request by Lender, amend Schedule 5.16(d) to the Information Certificate to describe such Commercial Tort Claims in a manner that reasonably identifies such Commercial Tort Claims and which is otherwise reasonably satisfactory to Lender, and hereby authorizes the filing of additional financing statements or amendments to existing financing statements describing such Commercial Tort Claims, and agrees to do such other acts or things deemed necessary or desirable by Lender to give Lender a first priority, perfected security interest in any such Commercial Tort Claim, which Commercial Tort Claim shall not be subject to any other Liens;

(f) **Government Contracts.** If any Account or Chattel Paper of Borrower arises out of a new contract or contracts with the United States of America or any State or any department, agency, or instrumentality thereof, Borrower shall promptly (and in any event within five (5) Business Days of the creation thereof) notify Lender thereof and, promptly (and in any event within two (2) Business Days) after request by Lender, execute any instruments or take any steps reasonably required by Lender in order that all moneys due or to become due under such contract or contracts shall be assigned for security purposes to Lender, for the benefit of Lender and each Bank Product Provider, and shall provide written notice thereof under the Assignment of Claims Act or other Applicable Law. Borrower shall also promptly notify Lender of any material amendments, modifications or waivers concerning any existing contract or contracts with the United States of America or any State or any department, agency, or instrumentality thereof.

(g) **Intellectual Property.**

(i) Upon the request of Lender, in order to facilitate filings with the PTO and the United States Copyright Office, subject to the Orders, as applicable, Borrower shall execute and deliver to Lender one or more Copyright Security Agreements, Patent Security Agreements or Trademark Security Agreements to further evidence Lender's Lien on Borrower's Patents, Trademarks, or Copyrights, and the General Intangibles of Borrower relating thereto or represented thereby;

(ii) Borrower shall have the duty, with respect to Intellectual Property that is material and necessary in the conduct of Borrower's business, to protect and diligently enforce and defend at Borrower's expense such Intellectual Property, including (A) to diligently enforce and defend, including promptly suing for infringement, misappropriation, or dilution and to recover any and all damages for such infringement, misappropriation, or dilution, and filing for opposition, interference, and cancellation against conflicting Intellectual Property rights of any Person, (B) to prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter, (C) to prosecute diligently any patent application that is part of the Patents pending as of the date hereof or hereafter, (D) to take all reasonable and necessary action to preserve and maintain all of Borrower's Trademarks, Patents, Copyrights, Intellectual Property Licenses, and its rights therein, including paying all maintenance fees

and filing of applications for renewal, affidavits of use, and affidavits of noncontestability, and (E) to require all employees, consultants, and contractors of Borrower who were involved in the creation or development of such Intellectual Property to sign agreements containing assignment to Borrower of Intellectual Property rights created or developed and obligations of confidentiality. Borrower shall not abandon any Intellectual Property or Intellectual Property License that is material and necessary in the conduct of its business. Borrower shall take the steps described in this Section 6.12(g)(ii) with respect to all new or acquired Intellectual Property to which it is now or later becomes entitled that is material and necessary in the conduct of Borrower's business;

(iii) Borrower acknowledges and agrees that Lender shall have no duties with respect to any Intellectual Property or Intellectual Property Licenses of Borrower. Without limiting the generality of this Section 6.12(g)(iii), Borrower acknowledges and agrees that Lender shall not be under any obligation to take any steps necessary to preserve rights in the Collateral consisting of Intellectual Property or Intellectual Property Licenses against any other Person, but Lender may do so at its option from and after the occurrence and during the continuance of an Event of Default, and all Lender Expenses reasonably incurred in connection therewith (including reasonable fees and expenses of attorneys and other professionals) shall be for the sole account of Borrower and shall be chargeable to the Loan Account;

(iv) Borrower shall promptly file an application with the United States Copyright Office for any Copyright that has not been registered with the United States Copyright Office if such Copyright is material and necessary in connection with the conduct of Borrower's business. Any expenses incurred in connection with the foregoing shall be borne by Borrower;

(v) Borrower shall not enter into any Intellectual Property License to receive any license or rights in any Intellectual Property of any other Person which is material and necessary in connection with the conduct of its business unless Borrower has used commercially reasonable efforts to permit the assignment of or grant of a security interest in such Intellectual Property License (and all rights of Borrower thereunder) to Lender (and any transferees of Lender);

(h) **Investment Related Property.**

(i) Upon the occurrence and during the continuance of an Event of Default, following the request of Lender, all sums of money and property paid or distributed in respect of the Investment Related Property that are received by Borrower shall be held by Borrower in trust for the benefit of Lender segregated from Borrower's other property, and Borrower shall deliver it promptly to Lender in the exact form received.

(ii) Borrower shall cooperate with Lender in obtaining all necessary approvals and making all necessary filings under federal, state, local, or foreign law to effect the perfection of the Security Interest on the Investment Related Property or to effect any sale or transfer thereof upon the occurrence and during the continuance of an Event of Default.

(i) **Cash Management.** Borrower shall maintain all Deposit Accounts at Lender and implement all such other cash management procedures as may be reasonably required by Lender, including lock box procedures and blocked account agreements that

provide for full dominion and automatic daily sweeps into a collection account controlled by and maintained with Lender.

(j) **Motor Vehicles.** Promptly upon the request of Lender in its sole discretion, Borrower shall deliver to Lender, an original certificate of title, an application naming Lender as first priority lienholder thereto and/or such other documentation as Lender shall request with respect to each item of Collateral which is a motor vehicle or which has a certificate of title, and Borrower shall cause, or cooperate with Lender in causing, such certificate of title and related items to be submitted to the appropriate state motor vehicle filing office for reissuance to Lender with the Lender's Lien noted thereon.

6.13 **Material Contracts.** At the request of Lender after the delivery of each Compliance Certificate pursuant to Section 6.1, promptly make available to Lender copies of (a) each Material Contract entered into since the delivery of the previous Compliance Certificate, and (b) each amendment or modification of any Material Contract entered into since the delivery of the previous Compliance Certificate. Except as provided for in Section 5.10 of Exhibit C hereto, Borrower shall maintain all Material Contracts in full force and effect and shall not default in the payment or performance of its obligations thereunder.

6.14 **Location of Inventory and Equipment.** Keep the Inventory and Equipment of Borrower (other than vehicles and Equipment out for repair in the ordinary course of business or sale or other disposition of Inventory in the ordinary of course of business) only at the locations identified on Schedule 5.27 to the Information Certificate or otherwise expressly permitted by Section 7.16 and keep the chief executive office of Borrower only at the locations identified on Schedule 5.16(b) to the Information Certificate; provided, however, that Borrower may amend Schedule 5.27 to the Information Certificate so long as such amendment occurs by written notice to Lender not less than 30 days prior to the date on which such Inventory or Equipment is moved to such new location, and so long as, at the time of such written notification, if requested by Lender, Borrower uses commercially reasonable efforts to provide Lender a Collateral Access Agreement with respect thereto if such location is not owned by Borrower.

6.15 **Further Assurances.**

(a) At any time upon the reasonable request of Lender, execute or deliver to Lender any and all financing statements, fixture filings, security agreements, pledges, collateral assignments, endorsements of certificates of title, opinions of counsel, and all other documents (the "Additional Documents") that Lender may request and in form and substance satisfactory to Lender, to create, perfect, and continue perfection or to better perfect Lender's Liens in the assets of Borrower (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by Applicable Law, if Borrower refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time, not to exceed ten days following the request to do so, Borrower hereby authorizes Lender to execute any such Additional Documents in Borrower's name and authorizes Lender to file such executed Additional Documents in any appropriate filing office. In furtherance and not in limitation of the foregoing, Borrower shall take such actions as Lender may reasonably request from time to time to ensure that the Obligations are secured by substantially all of the assets of Borrower;

(b) Borrower authorizes the filing by Lender of financing or continuation statements, or amendments thereto, and Borrower will execute and deliver to Lender such other instruments or notices, as Lender may reasonably request, in order to perfect and preserve the Security Interest granted or purported to be granted hereby;

(c) Borrower authorizes Lender at any time and from time to time to file, transmit, or communicate, as applicable, financing statements and amendments (i) describing the Collateral as "all personal property of debtor" or "all assets of debtor" or words of similar effect, (ii) describing the Collateral as being of equal or lesser scope or with greater detail, or (iii) that contain any information required by Part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of such financing statement. Borrower also hereby ratifies any and all financing statements or amendments previously filed by Lender in any jurisdiction; and

(d) Borrower acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed in connection with this Agreement without the prior written consent of Lender, subject to Borrower's rights under the Code.

6.16 **Material Licenses.** At the request of Lender after the delivery of each Compliance Certificate pursuant to Section 6.1, promptly make available to Lender copies of each Material License entered into since delivery of the previous Compliance Certificate. Borrower shall maintain all of its Material Licenses in full force and effect.

6.17 **Payment of Post-Petition Obligations.** Subject to the Orders, Borrower will pay its post-Petition Date Indebtedness and other obligations, including tax liabilities and Lease obligations (but excluding any past due rent) before the same shall become delinquent or in default, except where (a) the validity of or amount thereof is being contested in good faith by appropriate proceedings, (b) Borrower has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (c) such contest effectively suspends collection of the contested obligation and the enforcement of any Lien securing such obligation or the right of the lessor under such Lease to terminate such Lease.

6.18 Intentionally Deleted

6.19 **Budget Compliance.** Not later than two (2) Business Days after the close of each weekly period (i.e. each Friday) after the Petition Date, Borrower shall deliver a variance and compliance report (the "Compliance Report"), in form and substance satisfactory to Lender and certified by the CRO or the Borrower's Chief Financial Officer, on behalf of Borrower, (a) setting forth (i) actual results against anticipated results under the Budget for the most recently ended calendar week on a line item basis and in the aggregate as of the end of such calendar week and (ii) the variance in dollar amounts and percentages (including a report with detail reasonably satisfactory to Lender regarding any variance in excess of 10%) and (b) including a certification of the CRO as to Borrower's compliance or non-compliance with the Permitted Variance.

6.20 **Cooperation.** Borrower shall reasonably cooperate fully and in all respects with Lender and its counsel, advisors, appraisers, and professionals with respect to the implementation and enforcement of the Loan Documents and the Orders, in accordance with their terms.

6.21 **Chief Restructuring Officer.** Borrower shall continue to retain Michael Jacoby as its Chief Restructuring Officer.

6.22 **Sale of Assets.** Borrower and the CRO shall consult with Lender and its counsel, advisors, appraisers and professionals from time to time prior to entering into any out of the ordinary course of business sale agreement (whether or not contingent and on an ongoing basis so that Lender is at all times, apprised of the status, terms, progress and development of the Sale and Sale process, any and all other material non-ordinary course transactions, and all other material matters related to Borrower and/or the Case.

6.23 **Cash Collateral.** The Borrower shall be entitled to use the Lender's Cash Collateral pursuant to the Budget and in accordance with the Orders.

6.24 **Bankruptcy Milestones.** Borrower shall comply with the following bankruptcy milestones:

(a) The Petition Date shall be on or prior to the date hereof.

(b) Prior to the Petition Date, Borrower shall enter into an asset purchase agreement with a stalking horse bidder with respect to the Sale, for aggregate net cash consideration in a minimum amount necessary to Repay in Full the Obligations and all amounts due under the Existing Credit Agreement on terms reasonably satisfactory to Lender, including without limitation with no financing or diligence contingencies.

(c) Within 25 days after the Petition Date, Borrower shall have obtained from the Bankruptcy Court an order approving bid procedures (the "**Bid Procedures Order**") with respect to the Sale in form and substance reasonably satisfactory to Lender.

(d) An auction, if any, shall take place two Business Days after the bid deadline set forth in the Bid Procedures Order, but in any event no later than 60 days after the Petition Date.

(e) The Bankruptcy Court shall have entered an order approving the Sale to the highest bidder within 5 Business Days after the auction (if any) but in any event no later than 65 days after the Petition Date.

(f) The Sale shall close no later than 90 days after the Petition Date, for aggregate net cash consideration in a minimum amount necessary to Repay in Full the Obligations and all amounts due under the Existing Credit Agreement on terms reasonably satisfactory to Lender.

6.25 **Adequate Protection.** The Bankruptcy Court shall have entered an order granting adequate protection with respect to the Existing Credit Agreement (which adequate protection shall include requiring adequate protection for all Prepetition Obligations, partial paydown of the Prepetition Obligations in accordance with Paragraph 7.13, requiring payments with respect to all interest and fees payable under the Existing Credit Agreement, the granting of replacement Liens and Superpriority Claims in respect of the diminution in value of the Collateral (as defined in the Existing Credit Agreement)), from and after the Petition Date.

7. **NEGATIVE COVENANTS.**

Borrower covenants and agrees that until Payment in Full of the Obligations, Borrower will not do any of the following:

7.1 **Indebtedness.** From and after the Petition Date, create, incur, assume, suffer to come into existence, guarantee, or otherwise become, directly or indirectly, liable with respect to (a) any Indebtedness, except for Permitted Indebtedness or (b) any Superpriority Claims senior to or *pari passu* with the Obligations.

7.2 **Liens.** From and after the Petition Date, create, incur, assume, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

7.3 **Restrictions on Fundamental Changes.**

(a) Enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Stock, other than the Sale;

(b) Liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution) prior to the closing of the Sale;

(c) Suspend or cease operation of a substantial portion of its business prior to the closing of the Sale;

(d) Form or acquire any direct or indirect Subsidiary after the Closing Date; or

(e) Change its corporate structure.

7.4 **Disposal of Assets.** Other than Permitted Dispositions, sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the Collateral or any other asset except as expressly permitted by this Agreement. Lender shall not be deemed to have consented to any sale or other disposition of any of the Collateral or any other asset except as expressly permitted in this Agreement or the other Loan Documents.

7.5 **Change Name.** Change the name, organizational identification number, state of organization, organizational identity or "location" for purposes of Section 9-307 of the Code of Borrower, in each case without providing at least 45 days prior written notice thereof to Lender.

7.6 **Nature of Business.** Make any material change in the nature of its business as conducted on the date of this Agreement or acquire any properties or assets that are not reasonably related to the conduct of such business activities.

7.7 **Prepayments and Amendments.**

(a) Except as expressly permitted by the Interim Order or the Final Order (as applicable) or as expressly authorized by the Bankruptcy Court, make any payment on account of Indebtedness or other obligations which are pre-Petition Date obligations or otherwise have been contractually subordinated in right of payment to the Obligations (or any Indebtedness or other obligations owed under the Existing Credit Agreement) if such payment is not permitted at such time under this Agreement; or

(b) Except as expressly permitted by the Interim Order or the Final Order (as applicable) or as authorized by the Bankruptcy Court, directly or indirectly, amend, modify, or change any of the terms or provisions of

(i) any Material Contract except to the extent that such amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change; or

(ii) the Governing Documents of Borrower other than any amendment, modification or change required in connection with the Bankruptcy Case, including the Sale; provided, that, Borrower shall provide Lender prior written notice of any such amendment, modification or change.

7.8 **Change of Control.** Other than with respect to the Sale, cause, permit, or suffer, directly or indirectly, any Change of Control.

7.9 **Restricted Junior Payments.** Declare or make any Restricted Junior Payment.

7.10 **Accounting Methods.** Modify or change its method of accounting (other than as may be required to be in conformity with GAAP).

7.11 **Investments; Controlled Investments.**

(a) Except for Permitted Investments, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment.

(b) Other than amounts deposited into Deposit Accounts identified on Schedule 5.18 to the Information Certificate which are specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the employees of Borrower, make, acquire, or permit to exist Permitted Investments consisting of cash, Cash Equivalents, or amounts credited to Deposit Accounts or Securities Accounts unless Borrower has entered into Control Agreements with Lender governing such Permitted Investments in order to perfect (and further establish) Lender's Liens in such Permitted Investments. Borrower shall not establish or maintain any Deposit Account or Securities Account with a banking institution other than Lender.

7.12 **Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any transaction with Borrower or any Affiliate of Borrower except for, so long as Borrower has provided prior written notice thereof to Lender, a transaction not otherwise prohibited by this Agreement which has terms and conditions as favorable to Borrower as would be obtainable by Borrower in a comparable arms-length transaction with a Person which is not a Subsidiary or Affiliate.

7.13 **Use of Proceeds.** The proceeds of the Advances under this Agreement, the Cash Collateral and Collections and Proceeds of Collateral shall be used solely (and for no other purpose) in accordance with the Budget, which shall include, *inter alia*, a partial payoff of the Prepetition Obligations, including interest and fees, in the amount of \$1,500,000.00. None of the proceeds of the Advances, Cash Collateral, Collections, and Proceeds of Collateral, hereunder shall be used to (a) object, contest or raise any defense to,

the validity, perfection, priority, extent or enforceability of any amount due under the Orders, the Loan Documents or the Existing Credit Agreement, or the liens or claims granted under the Orders, the Loan Documents or the Existing Credit Agreement, (b) assert any claims, defenses or causes of action against the Lender, or its agents, affiliates, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the Lender's assertion, enforcement or realization on the Cash Collateral or the Collateral in accordance with the Loan Documents, the Existing Credit Agreement or the Orders, (d) seek to modify any of the rights granted to the Lender under the Orders, or under the Loan Documents or the Existing Credit Agreement, in each foregoing case without such party's prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an Order of this Court or (ii) in accordance with the terms of the Loan Documents. Notwithstanding the foregoing, up to \$25,000 in the aggregate of the proceeds of the Advances or the Cash Collateral may be used by the Official Committee to investigate the prepetition Permitted Liens (or the perfection or priority thereof) and the claims of Lender secured thereby. Other than disbursements included in the Budget (including, the partial paydown of the Existing Credit Agreement), the Cash Collateral, the proceeds of the Advances under this Agreement, the Carve-Out and the other Collateral shall not be used (a) to the extent such action has not been waived in the Loan Documents or the Orders to permit Borrower, or any other party in interest or their representatives, to challenge or otherwise contest or initiate or participate in any proceeding (i) the validity, perfection or priority of security interests on assets of Borrower or its Affiliates in favor of Lender or Liens granted under the Orders or (ii) the enforceability of the obligations of Borrower under the Existing Credit Agreement, (b) to commence, participate in or prosecute any motion, proceeding or cause of action against Lender or its agents, attorneys, officers, directors, employees, advisors or representatives, including, with respect to the Existing Credit Agreement and Processing Agreements or (c) to fund acquisitions, capital expenditures, capital leases or other transactions not in the ordinary course of Borrower's business other than as specifically set forth in the Budget.

7.14 **Margin Stock and Orders.** Use the proceeds of the loans made to Borrower to purchase or carry any Margin Stock, to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any other purpose, in each case that violates the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System or for any purpose not permitted by the Orders, as applicable.

7.15 **Limitation on Issuance of Stock.** Issue or sell or enter into any agreement or arrangement for the issuance and sale of any of its Stock which would result in a Change of Control.

7.16 **Consignments.** Consign any of its Inventory or sell any of its Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale.

7.17 **Inventory and Equipment with Bailees.** Store the Inventory or Equipment of Borrower at any time now or hereafter with a bailee, warehouseman, or similar party, except as set forth on Schedule 5.27 to the Information Certificate or on Schedule 7.17 to the Information Certificate; provided, however, that Borrower may amend Schedule 5.27 to the Information Certificate so long as such amendment occurs by written notice to Lender not less than 30 days prior to the date such Inventory or Equipment is moved to such new location, and so long as, at the time of such written notice, if requested by Lender, Borrower uses commercially reasonable efforts to provide Lender a Collateral Access Agreement with respect to such location if such location is not owned by Borrower.

7.18 **Salaries and Other Compensation.** Increase the salary, bonus, commissions, consultant fees or other compensation of the directors, officers and consultants of Borrower, and any members of their families, except in the ordinary course of business and as permitted in the Budget. Nothing herein shall be deemed a waiver of Lender's right to challenge any of the foregoing salary, bonus, commissions, consultant fees or other compensation as provided above.

7.19 **Intentionally Omitted.**

7.20 **Chapter 11 Claims.** Borrower shall not incur, create, assume, suffer to exist or permit any super-priority administrative claim against it which is pari passu with or senior to the claims of Lender against Borrower.

7.21 **Repayment of Indebtedness.** Except as specifically permitted hereunder or as expressly authorized or directed by the Bankruptcy Court, make any payment or transfer with respect to any Lien, Indebtedness or other obligation incurred or arising prior to the filing of the Case that is subject to the automatic stay provisions of the Bankruptcy Code whether by way of "adequate protection" under the Bankruptcy Code or otherwise, without the express prior written consent of Lender.

7.22 **Burdensome Agreements.** From and after the Petition Date, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction (other than any Loan Documents or the Existing Credit Agreement) of any kind on the ability of any Person to pay or make any dividends or distributions to Borrower, to grant Liens to secure the Obligations, to pay any of the Obligations, to make loans or advances or to transfer any of its property or assets to Borrower.

7.23 **Financial Covenant.** Unless otherwise agreed in writing by Lender (and as to which, Lender is under no obligation to agree to any further variance beyond the Permitted Variance), each Compliance Report shall indicate whether there are any adverse variances that exceed the Permitted Variance. "Permitted Variance" means, on a cumulative basis, (a) up to 15% on any disbursement line-item or (b) 10% in the aggregate for all cash disbursements.

7.24 **Reporting.** Borrower shall also comply with the reporting requirements, substantially similar to those existing immediately prior to the Petition Date, as set forth in paragraphs 15, 16 and 18 of Borrower's existing Second Amended Forbearance Agreement, dated May 9, 2014, and pursuant to the Processing Agreements.

8. **EVENTS OF DEFAULT.**

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

(a) If Borrower fails to pay when due and payable, or when declared due and payable (other than when such failure is caused by the establishment of an additional reserve by the Lender pursuant to any Processing Agreement), all or any portion of the Obligations consisting of principal, interest, fees, charges or other amounts due Lender or any Bank Product Provider, reimbursement of Lender Expenses, or other amounts constituting Obligations (including any portion thereof that accrues after the commencement of an

Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding);

(b) If Borrower fails to perform or observe any material covenant or other material agreement contained in this Agreement (including, without limitation, those contained in Sections 6 or 7 of this Agreement), or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is unable to be cured or is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of ten days;

(c) If Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of the business affairs of Borrower;

(d) If any material warranty, representation, certificate, statement, or Record made herein or in any other Loan Document or delivered in writing to Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

(e) If any event or circumstance shall occur after that Petition Date which, in the sole discretion of Lender exercised in good faith, would be reasonably likely to cause Lender to suspect that Borrower has engaged in fraudulent activity with respect to the Collateral or other matters postpetition;

(f) Any current director or officer of Borrower is indicted for a felony offense under state or federal law involving embezzlement, fraud or any other financial crime or any other felony offense under state or federal law involving intentional misconduct, or Borrower hires an officer or appoints a director who has been convicted of any such felony offense;

(g) If Borrower fails to pay any Indebtedness or obligation owed to Lender or its Affiliates which is unrelated to the Revolving Credit Facility or this Agreement as it becomes due and payable (other than when such failure is caused by the establishment of an additional reserve by the Lender pursuant to any Processing Agreement) or the occurrence of any future default or event of default under any agreement between Borrower and Lender or its Affiliates unrelated to the Loan Documents;

(h) The validity or enforceability of any Loan Document as against Borrower shall at any time for any reason be declared to be null and void, or a proceeding shall be commenced by Borrower, or by any Governmental Authority having jurisdiction over Borrower, seeking to establish the invalidity or unenforceability thereof as against Borrower, or Borrower shall deny that Borrower has any liability or obligation purported to be created under any Loan Document;

(i) The Collateral suffers material loss or damage

(j) A Material Adverse Change occurs;

(k) If (i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability

of Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$5,000, or (ii) Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan;

(l) Borrower becomes the subject of any governmental investigation related to an asserted felony offense occurring after the Petition Date, or is indicted by any Governmental Authority with respect to any asserted felony offense, under federal or state law, occurring after the Petition Date;

(m) Prior to the closing the Sale, the Case shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code or Borrower shall file a motion or other pleading seeking the dismissal of the Case under section 1112 of the Bankruptcy Code or otherwise; a trustee under chapter 7 or chapter 11 of the Bankruptcy Code, a responsible officer (other than the CRO) or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code shall be appointed in the Case and the order appointing such trustee, responsible office or examiner shall not be reversed or vacated within ten days after the entry thereof; an order of a Bankruptcy Court shall be entered granting any Superpriority Claim (other than the Carve-Out) in the Case which is pari passu with or senior to the claims of Lender against Borrower thereunder;

(n) The Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any material assets of Borrower or permit other actions that would result in a Material Adverse Change;

(o) An order of the Bankruptcy Court shall be entered reversing, staying, vacating or (without the written consent of Lender) otherwise amending, supplementing or modifying the Interim Order or the Final Order;

(p) Except as permitted by the Interim Order or Final Order, or as otherwise permitted by this Agreement (including in connection with adequate protection payments), or as otherwise agreed to by Lender, Borrower shall make any Prepetition Payment other than Prepetition Payments authorized by the Bankruptcy Court (i) in accordance with "first day" or "second day" orders, (ii) in connection with the assumption of executory contracts and unexpired leases and (iii) in respect of accrued payroll and related expenses and employee benefits as of the Petition Date;

(q) Borrower shall not comply with any terms of any of the Interim Order and the Final Order or the Borrower violates the Permitted Variance;

(r) Borrower shall fail to make payments (whether principal, interest or fees and expenses and in excess of \$5,000) in respect to any post-Petition Date Indebtedness, when and as the same shall become due and payable;

(s) Any event or condition occurs that results in any post-Petition Date Indebtedness in an aggregate principal amount in excess of \$5,000 becoming due prior to its scheduled maturity or that enables or permits (after the giving of notice and/or the lapse of

any applicable grace period) the holder or holders of such Indebtedness or any trustee or agent on its or their behalf to cause any such Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this Section 8(t) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;

(t) One or more judgments for the payment of money of a post-Petition Date liability or debt in excess of amounts covered by insurance shall be rendered against Borrower and the same shall remain undischarged for a period of ten consecutive days during which executing shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of Borrower to enforce any such judgment;

(u) Any Lien purported to be created under any Loan Documents or the Existing Credit Agreement including the Interim Order or the Final Order shall cease to be, or shall be asserted by Borrower not to be, a valid and perfected Lien on any material portion of the Collateral, with the priority required by the applicable Loan Document, the Existing Credit Agreement, the Interim Order or the Final Order, except as expressly permitted hereunder or thereunder; or Borrower contests in any manner the validity or enforceability of any provision of any Loan Document, the Existing Credit Agreement or any Lien granted under any Loan Document, the Existing Credit Agreement or the Interim Order or the Final Order; or Borrower denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document;

(v) Except as a result of the Case, any material provision of the Existing Credit Agreement, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or as a result of acts or omissions by Lender or the Payment in Full of the Prepetition Obligations, ceases to be in full force and effect; or Borrower contests in writing the validity or enforceability of any provision of the Existing Credit Agreement; or Borrower denies in writing that it has any or further liability or obligation under the Existing Credit Agreement (other than as a result of a discharge of Borrower's Prepetition Obligations in accordance with the terms thereof), or purports in writing to revoke or rescind the Existing Credit Agreement;

(w) The payment of or granting adequate protection with respect to pre-Petition Date Indebtedness (other than as set forth in the Budget or otherwise ordered by the Bankruptcy Court; provided, however, that with respect to the latter, any such grant of adequate protection shall in all cases be junior to the rights, liens, and claims of the Lender hereunder);

(x) The cessation of super-priority claims granted with respect to the Loan Documents and the Existing Credit Agreement to be valid, perfected and enforceable in all respects;

(y) The filing by Borrower or the Official Committee of any claim or cause of action challenging the validity, perfection or priority of any of the Liens granted pursuant to the Orders and this Agreement;

(z) The filing by Borrower of a plan of reorganization that does not satisfy the Obligations and Prepetition Obligations in full in cash, or

(aa) The payment of estate professional fees other than to the extent set forth in the Budget.

9. **RIGHTS AND REMEDIES.**

9.1 **Rights and Remedies.** Upon the occurrence of an Event of Default and after three (3) Business Days' prior written notice by electronic mail (deemed received upon transmittal) to Borrower, the Official Committee, if any, and the U.S. Trustee, at Lender's election and without further order of the Bankruptcy Court: (1) Lender shall have automatic and immediate relief from the automatic stay under section 362 of the Bankruptcy Code with respect to the Collateral (without regard for the passage of time provided for in Fed. R. Bankr. P. 4001(a)(3)) and shall be entitled to exercise all rights and remedies available to it under the Existing Credit Agreement, the Loan Documents and applicable nonbankruptcy law; and (2) Borrower shall otherwise cooperate with Lender in the exercise of Lender's rights and remedies under the Existing Credit Agreement, the Loan Documents and applicable nonbankruptcy law, including, without limitation, by filing a motion to retain one or more agents to sell, lease or otherwise dispose of the Collateral upon request of, and subject to terms and conditions acceptable to, Lender. Subject to the above, in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by Applicable Law, Lender may do any one or more of the following to the fullest extent permitted by Applicable Law (including the Code):

(a) declare the Obligations, whether evidenced by this Agreement or by any of the other Loan Documents immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrower shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by Borrower;

(b) declare the funding obligations of Lender under this Agreement terminated, whereupon such funding obligations shall immediately be terminated together with any obligation of Lender hereunder to make Advances;

(c) give notice to an Account Debtor or other Person obligated to pay an Account, a General Intangible, Negotiable Collateral, or other amount due, notice that the Account, General Intangible, Negotiable Collateral or other amount due has been assigned to Lender for security and must be paid directly to Lender and Lender may collect the Accounts, General Intangible and Negotiable Collateral of Borrower directly, and any collection costs and expenses shall constitute part of the Obligations under the Loan Documents;

(d) in Lender's name or in Borrower's name, as Borrower's agent and attorney-in-fact, notify the United States Postal Service to change the address for delivery of Borrower's mail to any address designated by Lender, otherwise intercept Borrower's mail, and receive, open and dispose of Borrower's mail, applying all Collateral as permitted under this Agreement and holding all other mail for Borrower's account or forwarding such mail to Borrower's last known address;

(e) without notice to or consent from Borrower, and without any obligation to pay rent or other compensation, take exclusive possession of all locations where Borrower conducts its business or has any rights of possession and use the locations to store, process, manufacture, sell, use, and liquidate or otherwise dispose of items that are Collateral, and for any other incidental purposes deemed appropriate by Lender in good faith; and

(f) exercise all other rights and remedies provided for in this Agreement, in the other Loan Documents, or otherwise available to it, including, without limitation, all the rights and remedies of a secured party on default under the Code or any other Applicable Law.

9.2 **Additional Rights and Remedies.** Without limiting the generality of the foregoing and upon the occurrence of an Event of Default, to the fullest extent permitted by Applicable Law, including the Code, and subject solely to the notice requirements set forth in Section 9.1 above and in each specific right and remedy below, if any (all other or further notice waived to the maximum extent permitted by Applicable Law, including the Code), Borrower expressly agrees that:

(a) Lender, without demand of performance or other demand, advertisement or notice of any kind (except a notice specified below of time and place of public or private sale) to or upon Borrower or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code or any other Applicable Law), may take immediate possession of all or any portion of the Collateral and

(i) require Borrower to make the Collateral available to Lender at one or more locations designated by Lender where Borrower conducts business, and

(ii) sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Lender's, or Borrower's offices or elsewhere, for cash, on credit, and upon such other terms as Lender may deem commercially reasonable. Borrower agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Borrower of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification and such notice shall constitute a reasonable "authenticated notification of disposition" within the meaning of Section 9-611 of the Code. Lender shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Lender may adjourn any public or private sale from time to time, and such sale may be made at the time and place to which it was so adjourned. Borrower agrees that the internet shall constitute a "place" for purposes of Section 9-610(b) of the Code. Borrower agrees that any sale of Collateral to a licensor pursuant to the terms of a license agreement between such licensor and Borrower is sufficient to constitute a commercially reasonable sale (including as to method, terms, manner, and time) within the meaning of Section 9-610 of the Code;

(b) Lender may, in addition to other rights and remedies provided for herein, in the other Loan Documents, or otherwise available to it under Applicable Law, in accordance with Applicable Law, (i) with respect to Borrower's Deposit Accounts in which Lender's Liens are perfected by control under Section 9-104 of the Code, instruct the bank maintaining such Deposit Account for Borrower to pay the balance of such Deposit Account to or for the benefit of Lender, and (ii) with respect to Borrower's Securities Accounts in which Lender's Liens are perfected by control under Section 9-106 of the Code, instruct the securities intermediary maintaining such Securities Account for Borrower to (A) transfer any cash in such Securities Account to or for the benefit of Lender, or (B) liquidate any financial assets in such Securities Account that are customarily sold on a recognized market and transfer the cash proceeds thereof to or for the benefit of Lender;

(c) any cash held by Lender as Collateral and all cash proceeds received by Lender in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall, in accordance with Applicable Law, be applied against the Obligations in the order set forth in Section 9.5 of this Agreement. In the event the proceeds of Collateral are insufficient to satisfy all of the Obligations in full, Borrower shall remain liable for any such deficiency;

(d) the Obligations arise out of a commercial transaction, and that, if an Event of Default shall occur and be continuing, Lender shall have the right to an immediate writ of possession. Lender shall have the right to the appointment of a receiver for Borrower or for the properties and assets of Borrower, and Borrower hereby consents to such rights and such appointment and hereby waives any objection Borrower or may have thereto or the right to have a bond or other security posted by Lender;

(e) Lender may credit bid all (or any portion of the) Obligations under this Agreement in any disposition of the Collateral;

(f) In accordance with Applicable Law and the Orders, Lender may set-off and/or recoup in the ordinary course of business and in accordance with past practices any and all amounts due and which may become due to Lender in connection with the Processing Agreements and the ongoing credit card processing services it provides to Borrower, including so related Prepetition Obligations.

9.3 Lender Appointed Attorney in Fact. Borrower hereby irrevocably appoints Lender its attorney-in-fact, with full authority in the place and stead of Borrower and in the name of Borrower or otherwise, at such time as an Event of Default has occurred and is continuing, to take any action and to execute any instrument which Lender may reasonably deem necessary or advisable to accomplish the purposes of this Agreement, including:

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in connection with the Accounts or any other Collateral of Borrower;

(b) to receive, indorse, and collect any drafts or other instruments, documents, Negotiable Collateral or Chattel Paper;

(c) to file any claims or take any action or institute any proceedings which Lender may deem necessary or desirable for the collection of any of the Collateral of Borrower or otherwise to enforce the rights of Lender with respect to any of the Collateral;

(d) to repair, alter, or supply Goods, if any, necessary to fulfill in whole or in part the purchase order of any Person obligated to Borrower in respect of any Account of Borrower;

(e) to use any Intellectual Property or Intellectual Property Licenses of Borrower including but not limited to any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, or advertising matter, in preparing for sale, advertising for sale, or selling Inventory or other Collateral and to collect any amounts due under Accounts, contracts or Negotiable Collateral of Borrower;

(f) to take exclusive possession of all locations where Borrower conducts its business or has rights of possession, without notice to or consent of Borrower and to use such locations to store, process, manufacture, sell, use, and liquidate or otherwise dispose of items that are Collateral, without obligation to pay rent or other compensation for the possession or use of any location;

(g) Lender shall have the right, but shall not be obligated, to bring suit in its own name or in Borrower's name, to enforce the Intellectual Property and Intellectual Property Licenses and, if Lender shall commence any such suit, Borrower shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents reasonably required by Lender in aid of such enforcement; and

(h) to the extent permitted by law, Borrower hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until all commitments of Lender under this Agreement to provide extensions of credit are terminated and all Obligations have been paid in full in cash.

9.4 **Remedies Cumulative.** The rights and remedies of Lender under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. Lender shall have all other rights and remedies, not inconsistent herewith, as provided under the Code, by law, or in equity. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Default or Event of Default shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election, or acquiescence by it.

9.5 **Crediting of Payments and Proceeds.** To the fullest extent permitted by Applicable Law, all payments received by Lender with respect to the Obligations and all net proceeds from the enforcement of the Obligations shall be applied in such manner as Lender shall determine in its sole discretion and, thereafter, to Borrower (to be wired to the Designated Account) or such other Person entitled thereto under Applicable Law.

9.6 **Marshaling.** Subject to the entry of the Final Order, Lender shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies under the Loan Documents and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, Borrower hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of Lender's rights and remedies under the Loan Documents or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations are outstanding or by which any of the Obligations are secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, Borrower hereby irrevocably waives the benefits of all such laws.

9.7 **License.** Upon an Event of Default, Borrower hereby grants to Lender a non-exclusive, worldwide and royalty-free license to use or otherwise exploit all Intellectual Property rights of Borrower solely for the purpose of: (a) completing the manufacture of any in-process materials upon the occurrence and during the continuance of any Event of Default so that such materials become saleable Inventory, all in accordance with the same quality

standards previously adopted by Borrower for its own manufacturing; and (b) selling, leasing or otherwise disposing of any or all Collateral upon the occurrence and during the continuance of any Event of Default; provided, however, that such contingent license shall terminate automatically upon the closing of the Sale and payment in full of the Obligations, but excluding amounts due pursuant to the Existing Credit Agreement.

9.8 **Waiver.** Subject to entry of the Final Order, Borrower hereby releases and waives any and all surcharge claims under section 506(c) of the Bankruptcy Code or otherwise for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by Lender upon, the Collateral.

10. **WAIVERS; INDEMNIFICATION.**

10.1 **Demand; Protest; etc.** Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by Lender on which Borrower may in any way be liable.

10.2 **The Lender's Liability for Collateral.** Borrower hereby agrees that so long as Lender complies with its obligations, if any, under the Code, the Bankruptcy Code and other Applicable Law: (a) Lender shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Borrower.

10.3 **Indemnification.** Borrower shall pay, indemnify, defend, and hold the Lender-Related Persons (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery, enforcement, performance, or administration (including any restructuring, waiver, amendment, forbearance or workout with respect hereto) of this Agreement, any of the other Loan Documents, the Interim Order, the Final Order or the transactions contemplated hereby or thereby or the monitoring of compliance by Borrower and each of its Subsidiaries with the terms of the Loan Documents, (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, the Interim Order, the Final Order or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, (c) in connection with the custody, preservation, use or operation of, or, upon an Event of Default, the sale of, collection from, or other realization upon, any of the Collateral in accordance with this Agreement and the other Loan Documents, (d) with respect to the failure by Borrower to perform or observe any of the provisions hereof or any other Loan Document, (e) in connection with the exercise or enforcement of any of the rights of Lender hereunder or under any other Loan Document, (f) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned,

leased or operated by Borrower or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of Borrower or any of its Subsidiaries (g) in connection with the negotiation, preparation and filing and recordation of the Loan Documents, the Interim Order and the Final Order, (h) obtaining of approval of the Loan Documents by the Bankruptcy Court, (i) the preparation and review of pleadings, documents and reports related to the Case or any subsequent case under chapter 7 of the Bankruptcy Code, attendance at meetings, court hearings or conferences related to the Case or any subsequent case under chapter 7 of the Bankruptcy Code, (j) general monitoring of the Case or any subsequent case under chapter 7 of the Bankruptcy Code; (k) in connection with or as a result of the enforcement, performance or administration of (i) the Existing Credit Agreement and Processing Agreements, together with any and all amendments thereto (including for any such actions prior to or subsequently to the instant bankruptcy filing) and (ii) the Stock Pledge (including the Acknowledgement of the Stock Pledge) and the Guaranty, together with any and all amendments thereto (including for any such actions prior to or subsequently to the instant bankruptcy filing (collectively the within “(k)(ii)”, the “Enforcement Indemnity”), and (l) any continuation, transfer and/or transition agreement(s), as the case may be, required as part of the Sale, and Sale Order, (each and all of the foregoing, including the Enforcement Indemnity, the “Indemnified Liabilities”). The foregoing notwithstanding, Borrower shall not have any obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, or attorneys. This provision shall survive the termination of this Agreement and the repayment of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrower was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrower with respect thereto. WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.

A reserve, which shall be a Bancorp Retained Reserve under the Sale, shall be established at the closing of the Sale by Borrower in the amount of \$2.5 million to satisfy any and all Indemnified Liabilities (the “Indemnification Escrow”). The Indemnification Escrow shall be held in escrow by the Lender for a period of twenty-four months from the Closing of the Sale (the “Escrow Termination Date”); provided, however, that should the Investigation Period terminate without a claim or cause of action relating to the Indemnified Liabilities being timely commenced against an Indemnified Person by any creditor, interest holder, Official Committee, and/or trustee (the “Investigation Termination Date”), the Indemnification Escrow shall be reduced to \$2,000,000 no later than three (3) business days following the Investigation Termination Date. Any and all liabilities associated with the Enforcement Indemnity owing to any Indemnified Person shall be satisfied solely and exclusively from the Indemnification Escrow and not from any other assets of the Borrower (it being understood and agreed that nothing herein shall be deemed to cap the Borrower’s obligations to any Indemnified Person on account of the Indemnified Liabilities except with respect to liabilities relating to the Enforcement Indemnity, which shall be satisfied solely and exclusively from the Indemnification Escrow and not from any other assets of the Borrower). Any funds released from the Indemnification Escrow following the Investigation Terminate

Date or that remain in the Indemnification Escrow on the Escrow Termination Date shall be released to the Borrower and/or its bankruptcy estate.

11. **NOTICES**

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or facsimile. In the case of notices or demands to Borrower or Lender, as the case may be, they shall be sent to the respective address set forth below:

If to Borrower:

PHOENIX PAYMENT SYSTEMS, INC.
1201 N. Market Street, Ste. 701
Wilmington, DE 19801
Attn: Michael Jacoby, CRO
Email: mjacoby@phoenixmanagement.com

with courtesy copies to
(which shall not constitute
Notice for purposes of this
Section 11):

Richards, Layton & Finger, P.A.
920 N. King Street
Wilmington, DE 19801
Attn: Mark D. Collins
Email: collins@rlf.com

If to Lender:

THE BANCORP BANK
Suite 105
409 Silverside Road
Wilmington, Delaware 19809
Attn: Charles S. Crawford, Sr. V.P.
Email: ccrawford@thebancorp.com

with courtesy copies to
(which shall not constitute Notice for
purposes of this
Section 11)

FOLEY & LARDNER LLP
90 Park Avenue
New York, New York 10016-1314
Attn: Douglas E. Spelfogel
Fax: (212) 687-2329
Email: dspelfogel@foley.com

Any party hereto may change the address at which it is to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or three Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's transmittal.

12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

(a) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO AS WELL AS ALL CLAIMS, CONTROVERSIES OR DISPUTES ARISING UNDER OR RELATED TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE (OTHER THAN ITS CONFLICT OF LAWS RULES AND EXCEPT TO THE EXTENT THE LAW OF ANY OTHER JURISDICTION APPLIES AS TO THE PERFECTION OR ENFORCEMENT OF LENDER'S LIEN IN ANY COLLATERAL AND EXCEPT TO THE EXTENT EXPRESSLY PROVIDED TO THE CONTRARY IN ANY LOAN DOCUMENT) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA (INCLUDING THE BANKRUPTCY CODE).

(b) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY OBLIGATIONS HEREUNDER OR THEREUNDER, MUST BE BROUGHT IN THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, SUCH PROCEEDING MAY BE BROUGHT IN THE COURTS OF THE STATE OF DELAWARE AND APPELLATE COURTS OF THE FOREGOING. BORROWER IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND AGREES THAT SUCH COURTS SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN BORROWER, ON THE ONE HAND, AND LENDER, ON THE OTHER HAND, PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; PROVIDED, THAT BORROWER ACKNOWLEDGES THAT ANY APPEALS FROM THE BANKRUPTCY COURT MAY HAVE TO BE HEARD BY A COURT OTHER THAN THE BANKRUPTCY COURT; PROVIDED, FURTHER, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE LENDER BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE SECURED OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER. BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. TO THE EXTENT PERMITTED BY LAW, EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON

IT AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO IT AT ITS ADDRESS FOR NOTICES AS PROVIDED FOR IN SECTION 12. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. BORROWER AND LENDER REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

13. **ASSIGNMENTS; SUCCESSORS.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not assign this Agreement or any other Loan Document or any rights or duties hereunder or under any of the other Loan Documents without Lender's prior written consent and any prohibited assignment shall be absolutely void ab initio. No consent to assignment by Lender shall release Borrower from its Obligations. Lender may assign this Agreement and the other Loan Documents in whole or in part and its rights and duties hereunder or grant participations in the Obligations hereunder and thereunder and no consent or approval by Borrower is required in connection with any such assignment or participation; provided, however, if a payment made to any assignee of Lender would be subject to U.S. federal withholding tax imposed by FATCA if such assignee were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such assignee shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Borrower as may be necessary for Borrower to comply with its obligations under FATCA and to determine that such assignee has complied with such assignee's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

14. **AMENDMENTS; WAIVERS.** No failure by Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Lender in exercising the same, will operate as a waiver thereof. No amendment of any provision of this Agreement or of any of the other Loan Documents will be effective unless it is in writing and signed by Lender and Borrower, and then only to the extent specifically stated. No waiver by Lender of any provision of this Agreement or of any of the other Loan Documents will be effective unless it is in writing and signed by Lender, and then only to the extent specifically stated. No waiver or amendment by Lender on any occasion shall affect or diminish Lender's rights thereafter to require strict performance by Borrower of any provision of this Agreement. Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Lender may have. Lender may

require a written amendment to this Agreement in connection with any changes to any Schedule of the Information Certificate which Borrower makes to such Schedule of Information as permitted under this Agreement to reflect such changes to such Schedule of Information.

15. **TAXES.**

(a) All payments made by Borrower hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Taxes, and in the event any deduction or withholding of Taxes is required, Borrower shall comply with the next sentence of this Section 15(a). If any Taxes are so levied or imposed, Borrower agrees to pay the full amount of such Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 15(a) after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein; provided, however, that Borrower shall not be required to increase any such amounts if the increase in such amount payable results from Lender's or such Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction). Borrower will furnish to Lender as promptly as possible after the date the payment of any Tax is due pursuant to Applicable Law, certified copies of tax receipts evidencing such payment by Borrower.

(b) Borrower agrees to pay any present or future stamp, value added or documentary taxes or any other excise or property taxes, charges, or similar levies that arise from any payment made hereunder or from the execution, delivery, performance, recordation, or filing of, or otherwise with respect to this Agreement or any other Loan Document.

16. **GENERAL PROVISIONS.**

16.1 **Effectiveness.** This Agreement shall be binding and deemed effective when executed by Borrower and Lender.

16.2 **Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

16.3 **Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against Lender or Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

16.4 **Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

16.5 **Debtor-Creditor Relationship.** The relationship between Lender, on the one hand, and Borrower, on the other hand, as established in the Loan Documents is solely that of creditor and debtor. Lender shall not have (and shall not be deemed to have) any fiduciary relationship or duty to Borrower arising solely out of or in connection with the Loan

Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between Lender, on the one hand, and Borrower, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

16.6 **Counterparts; Electronic Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile, pdf or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile, pdf or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

16.7 **Revival and Reinstatement of Obligations.** If the incurrence or payment of the Obligations by Borrower or the transfer to Lender of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "Voidable Transfer"), and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that Lender is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys' fees of Lender related thereto, the liability of Borrower shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made and all of Lender's Liens in the Collateral shall be automatically reinstated without further action.

16.8 **Announcements.** Lender may use the name, logos, and other insignia of Borrower and the Maximum Revolver Amount provided hereunder in any "tombstone" or comparable advertising, on its website or in other marketing materials of Lender.

16.9 **Lender Expenses.** Except as provided in the Orders, Borrower agrees to pay the Lender Expenses on the earlier of (a) the first day of the month following the date on which such Lender Expenses were first incurred, or (b) the date on which demand therefor is made by Lender, and Borrower agrees that its obligations contained in this Section 16.9 shall survive payment or satisfaction in full of all other Obligations.

16.10 **Setoff.** Upon the occurrence and during the continuance of any Default or Event of Default, Lender may at any time, in its sole discretion but subject to the notice requirements set forth in Section 9.1 above and in accordance with Applicable Law, setoff any liability owed to Borrower by Lender against any of the Obligations. Notwithstanding the foregoing and the automatic stay under section 362 of the Bankruptcy Code, the Lender is authorized to setoff and/or recoup in the ordinary course of business and in accordance with past practices all amounts that come due to Lender in connection with the Processing Agreements.

16.11 **Survival.** All representations and warranties made by Borrower in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been

relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any loans, and shall continue in full force and effect as long as any of the Obligations are outstanding and unpaid and so long as the obligation of Lender to provide extensions of credit hereunder has not expired or been terminated.

16.12 **Patriot Act.** Lender hereby notifies Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender to identify Borrower in accordance with the Patriot Act. In addition, if Lender is required by law or regulation or internal policies to do so, it shall have the right to periodically conduct (a) Patriot Act searches, OFAC/PEP searches, and customary individual background checks for Borrower, and (b) OFAC/PEP searches and customary individual background checks of Borrowers' senior management and key principals, and Borrower agrees to cooperate in respect of the conduct of such searches and further agrees that the reasonable costs and charges for such searches shall constitute Lender Expenses hereunder and be for the account of Borrower.

16.13 **Integration.** This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

16.14 **Bank Product Providers.** Each Bank Product Provider shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Lender is acting. Lender hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Lender as its agent and to have accepted the benefits of the Loan Documents; it being understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Lender and the right to share in payments and collections of the Collateral as more fully set forth herein and in the other Loan Documents. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Lender shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of Lender to determine or ensure whether the amount of any such reserve is appropriate or not. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Borrower.

16.15 **Waiver and Release.**

(a) Borrower expressly warrants, acknowledges, and agrees that the obligations under the Existing Credit Agreement constitute valid, binding and owing obligations of Borrower without defense, offset, credit or counterclaim.

(b) Borrower hereby forever releases, acquits and discharges Lender and its Affiliates, agents and representatives and their successors and assigns from any and all claims with respect to any actions or inaction taken or not taken by Lender or any such other Person, including that Lender is in any way responsible for the past, current, or future condition or deterioration of the business operations and/or financial condition of Borrower, and from any and all claims that Lender breached or may have breached any agreement to loan money or make other financial accommodations available to Borrower, any processor related agreement, any loan and security agreement, including any guarantee, or to fund any operations of Borrower at any time. In addition, Borrower shall require that any claims by any creditor or interest holder, the Official Committee, and/or the U.S. Trustee, with respect to any of the above-referenced issues, shall be made within not later than 75 days of the Petition Date or such later date as may be ordered by the Bankruptcy Court (the "Investigation Period"), otherwise such claims shall be enjoined and released.

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

BORROWER:

PHOENIX PAYMENT SYSTEMS, INC.

By: Michael Jacoby
Name: Michael Jacoby
Title: Chief Restructuring Officer

LENDER:

THE BANCORP BANK

By: 

Name: Charles Crawford

Title: Senior Vice President

Schedule 1.1

a. **Definitions.** As used in this Agreement, the following terms shall have the following definitions:

“Account” means an account (as that term is defined in Article 9 of the Code).

“Account Debtor” means an account debtor (as that term is defined in the Code).

“Acknowledgment of Stock Pledge” means that certain Agreement and Acknowledgment of the Stock Pledge executed by Borrower on April 11, 2012.

“Additional Documents” has the meaning specified therefor in Section 6.15 of this Agreement.

“Advances” has the meaning specified therefor in Section 2.1(a) of this Agreement.

“Affiliate” means, as applied to any Person other than the Lender, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; provided, however, that, for purposes of Section 7.12 of this Agreement: (a) any Person which owns directly or indirectly 10% or more of the Stock having ordinary voting power for the election of the board of directors or equivalent governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

“Agreement” means this Senior Secured Debtor-In-Possession Credit and Security Agreement to which this Schedule 1.1 is attached.

“Applicable Law” means as to any Person, all statutes, rules, regulations, orders, or other requirements having the force of law and applicable to such Person, and all court orders and injunctions, and/or similar rulings applicable to such Person, in each case of or by any Governmental Authority, or court, or tribunal which has jurisdiction over such Person, or any property of such Person.

“Authorized Person” means any one of the individuals identified on Schedule A-2, as such Schedule is updated from time to time by written notice from Borrower to Lender.

“Availability” means, as of any date of determination, the amount that Borrower is entitled to borrow as Advances under Section 2.1 of this Agreement (after giving effect to all then outstanding Obligations).

“Avoidance Actions” means, Borrower’s claims and causes of action under Section 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise.

“Bancorp Retained Reserve” shall have the meaning ascribed to it in the Purchase Agreement.

“Bank Product” means any one or more of the following financial products or accommodations extended to Borrower by a Bank Product Provider: (a) commercial credit cards, (b) commercial credit card processing services, (c) debit cards, (d) stored value cards, (e) purchase cards (including so-called “procurement cards” or “P-cards”), (f) Cash Management Services, or (g) transactions under Hedge Agreements.

“Bank Product Agreements” means those agreements entered into from time to time by Borrower with a Bank Product Provider in connection with the obtaining of any of the Bank Products, including, without limitation, all Cash Management Documents.

“Bank Product Collateralization” means providing cash collateral (pursuant to documentation reasonably satisfactory to Lender) to be held by Lender for the benefit of the Bank Product Provider in an amount determined by Lender as sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Bank Product Obligations.

“Bank Product Obligations” means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by Borrower to Lender or another Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and (b) all Hedge Obligations.

“Bank Product Provider” means Lender or any of its Affiliates that provide Bank Products to Borrower.

“Bankruptcy Code” means title 11 of the United States Code, as in effect from time to time.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware or any other court having jurisdiction over the Case from time to time.

“Bid Procedures Order” has the meaning specified therefor in Section 6.24(c) of this Agreement.

“Board of Directors” means the board of directors (or comparable managers) of Borrower or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

“Books” means books and records (including Borrower’s Records indicating, summarizing, or evidencing Borrower’s assets (including the Collateral) or liabilities, Borrower’s Records relating to Borrower’s results of business operations or financial condition, or Borrower’s Goods or General Intangibles related to such information).

“Borrower” means Phoenix Payment Systems, Inc., a Delaware corporation.

“Borrowing” means a borrowing consisting of Advances (i) requested by Borrower, (ii) made by Lender pursuant to Section 2.4(c), or (iii) a Protective Advance.

"Borrowing Request" a written request for a Borrowing substantially in the form of Exhibit E.

"Budget" means the cash flow projections of Borrower prepared by the CRO and approved by Lender showing anticipated cash receipts and disbursements on a weekly basis for the periods requested by Lender and in form and substance satisfactory to Lender.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close pursuant to the rules and regulations of the Federal Reserve System.

"Capitalized Lease Obligation" means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

"Capital Lease" means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

"Carve-Out" means the following expenses: (i) fees pursuant to 28 U.S.C. § 1930 and any fees payable to the Clerk of the Bankruptcy Court, (ii) following the occurrence of a Triggering Event, an aggregate amount incurred upon and after the occurrence of such Triggering Event not to exceed \$150,000 (the "Carve-Out Amount") for allowed fees, and reimbursement for disbursements of professionals retained by Borrower and/or the Official Committee (the "Professional Fee Payments"), (iii) without reducing the Carve-Out Amount, all Professional Fee Payments allowed, or subsequently allowed (and subject to reasonableness), and payable under sections 330 and 331 of the Bankruptcy Code to the extent incurred prior to such Triggering Event (the "Pipeline Period") consistent with (and not in excess of the professional fee line item accrual amounts established in) the Budget, and (iv) all other unpaid allowed administrative expenses incurred consistent with (and not in excess of line item amounts established in) the Budget through the earlier of (x) closing of the Sale, and (y) the occurrence of a Triggering Event, less any such expenses assumed by any purchaser in connection with the Sale.

"Carve-Out Amount" has the meaning specified therefor in the definition of "Carve-Out".

"Case" means the case under Chapter 11 of the Bankruptcy Code with respect to Borrower, with respect to which Borrower is the debtor and debtor-in-possession.

"Cash Collateral" has the meaning set forth in section 363(a) of the Bankruptcy Code.

"Cash Equivalents" means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and having one of the three highest ratings obtainable from either Standard & Poor's Rating Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances

maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having combined capital and surplus of not less than \$250,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than \$250,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above.

“Cash Management Services” means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant stored value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

“Cash Management Documents” means the agreements governing each of the Cash Management Services of Lender and/or one or more of its Affiliates.

“Change of Control” means that (a) the sale, lease, transfer, conveyance or other disposition, in one or a series of transactions, (i) of all or substantially all of the assets of Borrower or (ii) the sale of 50% or more of Borrower’s voting equity ownership, or (b) a majority of the members of the Board of Directors of Borrower do not constitute Continuing Directors.

“Chattel Paper” means chattel paper (as that term is defined in the Code), and includes tangible chattel paper and electronic chattel paper.

“Closing Date” means the date that the Interim Order is entered by the Bankruptcy Court.

“Code” means the Delaware Uniform Commercial Code, as in effect from time to time; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, priority, or remedies with respect to Lender’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of Delaware, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies. To the extent that defined terms set forth herein shall have different meanings under different Articles under the Uniform Commercial Code, the meaning assigned to such defined term under Article 9 of the Uniform Commercial Code shall control.

“Collateral” means each of the assets referred to in Section 3 hereof and all of the assets and property of Borrower (tangible, intangible, real, personal and mixed), wherever

located, whether now owned or existing or hereafter acquired or arising, including, without limitation, Borrower's:

- (a) Accounts (including, but not limited to reserve accounts and operating accounts);
- (b) Books;
- (c) Chattel Paper (and rights to payment evidenced by same);
- (d) Deposit Accounts, money, cash and Cash Equivalents;
- (e) Goods, including Equipment and Fixtures;
- (f) General Intangibles;
- (g) Inventory;
- (h) Investment Related Property;
- (i) Negotiable Collateral;
- (j) Supporting Obligations;
- (k) account receivables;
- (l) leasehold interests;
- (m) contracts and contract rights;
- (n) claims against Affiliates;
- (o) Commercial Tort Claims;
- (p) subject to entry of the Final Order, proceeds from Avoidance Actions;
- (q) tax refunds of any form;
- (r) other assets of Borrower that now or hereafter come into the possession, custody, or control of Lender (or its agent or designee); and
- (s) all of the proceeds (as such term is defined in the Code) and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance or Commercial Tort Claims covering or relating to any or all of the foregoing, and any and all Accounts, Books, Chattel Paper, Deposit Accounts, Equipment, Fixtures, General Intangibles, Inventory, Investment Related Property, Negotiable Collateral, Supporting Obligations, money, or other tangible or intangible property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, the proceeds of any award in condemnation with respect to any of the foregoing, any rebates or refunds, whether for taxes or otherwise, and all proceeds of any such proceeds, or any portion thereof or interest therein, and the proceeds thereof, and all proceeds of any loss of, damage to, or destruction of the above, whether insured or not insured, and, to the extent not otherwise included, any indemnity, warranty, or guaranty payable by reason of loss or damage to, or

otherwise with respect to any of the foregoing (the "Proceeds"). Without limiting the generality of the foregoing, the term "Proceeds" includes whatever is receivable or received when Investment Related Property or proceeds are sold, exchanged, collected, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes proceeds of any indemnity or guaranty payable to Borrower or Lender from time to time with respect to any of the Investment Related Property.

"Collateral Access Agreement" means a landlord's disclaimer and consent, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in the Books, Equipment, Accounts or Inventory of Borrower, in each case, in favor of Lender with respect to the Collateral at such premises or otherwise in the custody, control or possession of such lessor, warehouseman, processor, consignee or other Person and in form and substance reasonably satisfactory to Lender.

"Collection Account" means the Deposit Account identified on Schedule A-1.

"Collections" means all cash, checks, notes, instruments, and other items of payment (including insurance Proceeds, cash Proceeds of asset sales, rental Proceeds, and tax refunds).

"Commercial Tort Claims" means commercial tort claims (as that term is defined in the Code), and includes those commercial tort claims listed on Schedule 5.16(d) to the Information Certificate.

"Compliance Certificate" means a certificate substantially in the form of Exhibit A delivered by the chief financial officer of Borrower to Lender.

"Compliance Report" has the meaning specified therefor in Section 6.19 of this Agreement.

"Continuing Director" means (a) any member of the Board of Directors who was a director (or comparable manager) of Borrower on the Closing Date, and (b) any individual who becomes a member of the Board of Directors of Borrower after the Closing Date if such individual was approved, appointed or nominated for election to the Board of Directors by a majority of the Continuing Directors, but excluding any such individual originally proposed for election in opposition to the Board of Directors in office at the Closing Date in an actual or threatened election contest relating to the election of the directors (or comparable managers) of Borrower and whose initial assumption of office resulted from such contest or the settlement thereof.

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Lender, executed and delivered by Borrower, Lender, and the applicable securities intermediary (with respect to a Securities Account), the applicable bank (with respect to a Deposit Account) or issuer (with respect to uncertificated securities).

"Copyrights" means any and all rights in any works of authorship, including (i) copyrights and moral rights, (ii) copyright registrations and recordings thereof and all applications in connection therewith including those listed on Schedule 5.9 to the Information Certificate, (iii) income, license fees, royalties, damages, and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future

infringements thereof, (iv) the right to sue for past, present, and future infringements thereof, and (v) all of Borrower's rights corresponding thereto throughout the world.

"Copyright Security Agreement" means each Copyright Security Agreement executed and delivered by Borrower in favor of Lender, in form and substance reasonably acceptable to Lender.

"CRO" means Borrower's Chief Restructuring Officer, Michael Jacoby.

"Daily Balance" means, as of any date of determination and with respect to any Obligation, the amount of such Obligation owed at the end of such day.

"Default" means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

"Deposit Account" means any deposit account (as that term is defined in the Code).

"Designated Account" means the operating Deposit Account of Borrower at Lender identified on Schedule D-1.

"Dollars" or "\$" means United States dollars.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of Borrower, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by Borrower or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on Borrower, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"Environmental Liabilities" means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities.

"Equipment" means equipment (as that term is defined in the Code).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

“ERISA Affiliate” means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of Borrower under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of Borrower under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which Borrower is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Section 412 and 430 of the IRC, any Person subject to ERISA that is a party to an arrangement with Borrower and whose employees are aggregated with the employees of Borrower under IRC Section 414(o).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the IRC or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon Borrower or any ERISA Affiliate.

“Event of Default” has the meaning specified therefor in Section 8 of this Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as in effect from time to time.

“Existing Credit Agreement” means that certain Security Agreement dated April 11, 2012 (as amended, modified and/or expanded by that certain Forbearance Agreement dated June 27, 2012 and that certain Second Forbearance Agreement dated May 9, 2014) by and between Borrower and Lender, which secured to Lender all sums advanced to and/or guaranteed by Borrower prior to the Petition Date, pursuant to, inter alia, the Processing Agreements and Guaranty, together with the Stock Pledge and Acknowledgement of Stock Pledge.

“FATCA” means Sections 1471 through 1474 of the IRC as of the date of this Agreement (or any amendment or successor version that is substantially comparable) and any current or future regulations or official interpretations thereof.

“Final Order” means an order of the Bankruptcy Court, which order shall (w) be satisfactory in form and substance to Lender in its sole discretion (including, among other things, a finding that Lender has acted in good faith), (x) have been entered on such prior notice to such parties as may be satisfactory to Lender (y) authorize and approve this Agreement and the transactions contemplated hereby, including, without limitation, the granting of the super-priority status, security interests and Liens, and the payment of all fees,

all as contemplated herein and (z) not have been vacated, reversed, modified, amended or stayed.

“Fiscal Month” means any of the twelve periods comprising Borrower’s Fiscal Year, determined in accordance with Borrower’s historical practice.

“Fiscal Quarter” means a period of three consecutive Fiscal Months ending on or about March 31, June 30, September 30 or December 31.

“Financial Statement” has the meaning specified in Section 5.4.

“Fiscal Year” means a period of twelve Fiscal Months ending on or about December 31.

“Fixtures” means fixtures (as that term is defined in the Code).

“Foreign Subsidiary” means, with respect to any Person, any Subsidiary of such Person that is not organized or existing under the laws of the United States of America, any state thereof or the District of Columbia and any Subsidiary that holds no material assets other than interests in Foreign Subsidiaries.

“Funding Date” means the date on which a Borrowing occurs.

“GAAP” means generally accepted accounting principles as in effect in the United States on the Closing Date, consistently applied, except that all calculations relative to liabilities shall be made without giving effect to Statement of Financial Accounting Standards No. 159.

“General Intangibles” means general intangibles (as that term is defined in the Code), and includes payment intangibles, contract rights, rights to payment, rights under Hedge Agreements (including the right to receive payment on account of the termination (voluntarily or involuntarily) of any such Hedge Agreements), rights arising under common law, statutes, or regulations, choses or things in action, goodwill, Intellectual Property, Intellectual Property Licenses, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment and other rights under any royalty or licensing agreements, including Intellectual Property Licenses, infringement claims, pension plan refunds, pension plan refund claims, insurance premium rebates, tax refunds, and tax refund claims, interests in a partnership or limited liability company which do not constitute a security under Article 8 of the Code, and any other personal property other than Commercial Tort Claims, money, Accounts, Chattel Paper, Deposit Accounts, Goods, Investment Related Property, Negotiable Collateral, and oil, gas, or other minerals before extraction.

“Goods” means goods (as that term is defined in the Code).

“Governing Documents” means, with respect to any Person, the certificate or articles of incorporation, certificate of formation, by-laws, operating agreement, limited liability company agreement, shareholder agreement, investment agreement or other organizational documents of such Person.

“Governmental Authority” means any federal, state, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court, tribunal,

administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

“Guaranty” means that certain Guaranty, dated June 27, 2012, by Borrower for the benefit of Lender, of the Promissory Note and Home Equity Line of Credit Agreement between DIP Lender, as lender, and Raymond Moyer, as borrower, dated October 9, 2002 and June 28, 2010.

“Hazardous Materials” means (a) substances that are defined or listed in, or otherwise classified pursuant to, any Applicable Laws or regulations as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or “EP toxicity”, (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

“Hedge Agreement” means a “swap agreement” as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

“Hedge Obligations” means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of Borrower arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with Lender or another Bank Product Provider.

“Indebtedness” as to any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables and accrued expenses incurred in the ordinary course of business and repayable in accordance with customary trade practices), (f) all net obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) any Prohibited Preferred Stock of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness described in clause (d) above shall be the lower of the amount of the obligation and the fair market value of the assets of such Person securing such obligation. “Indebtedness” shall not include any obligations in respect of customer advances received and held in the ordinary course of business.

“Indemnified Liabilities” has the meaning specified therefor in Section 10.3 of this Agreement.

“Indemnified Person” has the meaning specified therefor in Section 10.3 of this Agreement.

“Information Certificate” means the Information Certificate completed by Borrower and acceptable to Lender attached to this Agreement as Exhibit D.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors generally, receiverships, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

“Intellectual Property” means any and all Patents, Copyrights, Trademarks, trade secrets, know-how, inventions (whether or not patentable), algorithms, software programs (including source code and object code), processes, product designs, industrial designs, blueprints, drawings, data, customer lists, URLs and domain names, specifications, documentations, reports, catalogs, literature, and any other forms of technology or proprietary information of any kind, including all rights therein and all applications for registration or registrations thereof.

“Intellectual Property Licenses” means, with respect to any Person (the “Specified Party”), (i) any licenses or other similar rights provided to the Specified Party in or with respect to Intellectual Property owned or controlled by any other Person, and (ii) any licenses or other similar rights provided to any other Person in or with respect to Intellectual Property owned or controlled by the Specified Party, in each case, including (A) any software license agreements (other than license agreements for commercially available off-the-shelf software that is generally available to the public which have been licensed to the Specified Party pursuant to end-user licenses), (B) the license agreements listed on Schedule 5.15 to the Information Certificate, and (C) the right to use any of the licenses or other similar rights described in this definition in connection with the enforcement of Lender’s rights under the Loan Documents.

“Interest Rate” means an interest rate equal to the Prime Rate, which interest rate shall change whenever the Prime Rate changes.

“Interest Rate Margin” means with respect to Advances under the Revolving Credit Facility, two percent per annum.

“Interim Order” means an order of the Bankruptcy Court on an application or motion by Borrower, which order shall (w) be satisfactory in form and substance to Lender in its sole discretion (including, among other things, a finding that Lender has acted in good faith), (x) have been entered on such prior notice to such parties as may be satisfactory to Lender (y) authorize and approve this Agreement and the transactions contemplated hereby, including, without limitation, the granting of the super-priority status, security interests and Liens, and the payment of all fees, all as contemplated herein and (z) not have been vacated, reversed, modified, amended or stayed.

“Inventory” means inventory (as that term is defined in the Code).

“Investigation Period” has the meaning specified therefor in Section 16.15(b) of this Agreement.

“Investment” means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions, or acquisitions of Indebtedness, Stock, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

“Investment Related Property” means any and all investment property (as that term is defined in the Code).

“IRC” means the Internal Revenue Code of 1986, as in effect from time to time.

“Lease” means any agreement, whether written or oral no matter how styled or structured, pursuant to which Borrower is entitled to the use or occupancy of any real property for any period of time.

“Lender” has the meaning specified therefor in the preamble to this Agreement and its successors and assigns.

“Lender-Related Persons” means Lender, together with its Affiliates, officers, directors, employees, attorneys, and agents.

“Lender’s Liens” mean the Liens granted by Borrower to Lender under the Loan Documents.

“Lender Expenses” means all (a) reasonable costs or expenses (including taxes, and insurance premiums) required to be paid by Borrower under any of the Loan Documents that are paid, advanced, or incurred by Lender, (b) reasonable fees or charges paid or incurred by Lender in connection with Lender’s transactions with Borrower under any of the Loan Documents, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, judgment lien, litigation, bankruptcy and Code searches and including searches with the patent and trademark office, the copyright office, or the department of motor vehicles), filing, recording, publication, appraisal (including periodic collateral appraisals or business valuations to the extent of the fees and charges, and environmental audits, (c) Lender’s customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrower (whether by wire transfer or otherwise), together with any costs and expenses incurred in connection therewith, (d) charges paid or incurred by Lender resulting from the dishonor of checks payable by or to Borrower, (e) reasonable costs and expenses paid or incurred by Lender to correct any default or enforce any provision of the Loan Documents, or in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (f) reasonable examination fees and expenses (including reasonable travel, meals, and lodging) of Lender related to any inspections, exams, audits or appraisals to the extent of the fees and charges, (g) subject to the terms and limitations contained in Section 10.3 of this Agreement, the reasonable costs and expenses incurred by Lender in connection with Indemnified Liabilities, (h) Lender’s reasonable fees, costs, disbursements and expenses (including reasonable

attorneys', advisors' and professionals' fees) incurred in preparing, executing, delivering, advising, structuring, drafting, reviewing, administering (including reasonable transportation, meals, and lodging), or amending or waiving the Loan Documents and funding of all Advances under this Agreement, including without limitation, all due diligence, syndication (including printing, distribution and bank meeting), computer, duplication, messenger, audit, insurance, appraisal and consultant costs and expenses , and (i) Lender's reasonable costs and expenses (including reasonable attorneys, accountants, consultants, advisors, professionals and other advisors fees, disbursements and expenses) incurred in terminating, enforcing, protecting (including reasonable attorneys, accountants, consultants, professionals and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning Borrower or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether suit is brought, or in taking any Remedial Action concerning the Collateral.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment for security purposes, charge, deposit arrangement for security purposes, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

"Loan Account" has the meaning specified therefor in Section 2.6 of this Agreement.

"Loan Documents" means this Agreement, each amendment thereto, the Control Agreements, the Cash Management Documents, the Orders, any note or notes executed by Borrower in connection with this Agreement and payable to Lender and any other instrument or agreement entered into, now or in the future, by Borrower or any other Person in favor of Lender in connection with this Agreement.

"Lockbox" means each lockbox contemplated by the Cash Management Documents.

"Margin Stock" as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"Material Adverse Change" means (a) a material adverse change in the business, operations, results of operations, assets, liabilities or financial condition of Borrower, (b) a material impairment of the ability of Borrower to perform its obligations under the Loan Documents or of the Lender's ability to enforce the Obligations or realize upon any of the collateral security for the Obligations, including, without limitation, any of the Collateral, or (c) a material impairment of the enforceability or priority of Lender's Liens with respect to any of the collateral security for the Obligations, including, without limitation, any of the Collateral, as a result of an action or failure to act on the part of Borrower or estate.

"Material Contract" has the meaning set forth in Section 5.10 of Exhibit C attached hereto.

"Material Licenses" means, with respect to Borrower, any license, permit or other authorization which is required or necessary for Borrower to conduct any material portion of its business or operations.

"Maximum Revolver Amount" is \$5,000,000.

“Moody’s” has the meaning specified therefor in the definition of Cash Equivalents.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Negotiable Collateral” means letters of credit, letter-of-credit rights, instruments, promissory notes, drafts and documents (as each such term is defined in the Code).

“Obligations” means (a) all loans (including the Advances), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding), premiums, liabilities (including all amounts charged to the Loan Account pursuant to this Agreement), obligations (including indemnification obligations), fees, costs, Lender Expenses (including any fees or expenses that accrue after the commencement of an Insolvency Proceeding), guaranties, and all covenants and duties of any other kind and description owing by Borrower pursuant to or evidenced by this Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, sole, joint, several or joint and several, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that Borrower is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, and (b) all Bank Product Obligations. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

“OFAC” means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Official Committee” means the official committee of unsecured creditors appointed in the Case to investigate the prepetition Liens and claims of Lender.

“Overadvance Amount” has the meaning specified therefor in Section 2.3(e) of this Agreement.

“Orders” mean the Interim Order and the Final Order, collectively.

“Payment in Full” or “Paid in Full” or “Repay in Full” means, when used in connection with the Obligations, the full and indefeasible payment in cash of all of the Obligations, and the expiration, termination, cancellation or cash collateralization of all Bank Product Obligations (including Hedge Obligations) or other similar obligations, and the termination of all commitments and obligations of Lender to make loans or extend other financial accommodations to Borrower under this Agreement or the other Loan Documents.

“Patents” means patents and patent applications, including (i) the patents and patent applications listed on Schedule 5.9 to the Information Certificate, (ii) all continuations, divisionals, continuations-in-part, re-examinations, reissues, and renewals thereof and

improvements thereon, (iii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (iv) the right to sue for past, present, and future infringements thereof, and (v) all of Borrower's rights corresponding thereto throughout the world.

"Patent Security Agreement" means each Patent Security Agreement executed and delivered by Borrower in favor of Lender, in form and substance reasonably acceptable to Lender.

"Patriot Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the IRC and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the IRC and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the IRC and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the IRC.

"Permitted Dispositions" means:

- (a) sales of Inventory to buyers in the ordinary course of business;
- (b) the granting of Permitted Liens;
- (c) the making of a Permitted Investment;
- (d) any other disposition (not otherwise specifically permitted in this definition of Permitted Dispositions) which is agreed to in writing by Lender in its sole discretion; and
- (f) any Sale.

"Permitted Indebtedness" means:

- (a) Indebtedness evidenced by this Agreement or the other Loan Documents or any other Indebtedness of Borrower to Lender including, without limitation, the Prepetition Obligations;
- (b) Indebtedness disclosed on the Financial Statements;
- (c) Permitted Purchase Money Indebtedness and any Refinancing Indebtedness in respect of such Indebtedness;

- (d) endorsement of instruments or other payment items for deposit; and
- (e) other Indebtedness (not otherwise specifically permitted in this definition of Permitted Indebtedness) which is agreed to in writing by Lender in its sole discretion.

"Permitted Investments" means:

- (a) Investments in cash and Cash Equivalents;
- (b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;
- (c) advances made in connection with purchases of Goods or services in the ordinary course of business from Persons which are not Affiliates of Borrower;
- (d) Investments owned by Borrower on the Closing Date and set forth on Schedule P-1;
- (e) Investments resulting from entering into Bank Product Agreements;
- (f) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business; and
- (g) Investments constituting deposits made in connection with the purchase of goods or services or to secure the performance of statutory obligations constituting Permitted Liens, in each case in the ordinary course of business in an aggregate amount for such deposits not to exceed \$50,000 at any one time.

"Permitted Liens" means

- (a) Liens granted to, or for the benefit of, Lender and/or the Bank Product Providers to secure the Obligations and the Prepetition Obligations;
- (b) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) do not have priority over Lender's Liens and the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests;
- (c) Liens set forth on Schedule P-2; provided, however, that to qualify as a Permitted Lien, any such Lien described on Schedule P-2 shall only secure the Indebtedness that it secures on the Closing Date;
- (e) the interests of lessors under operating leases and non-exclusive licensors under license agreements;
- (f) purchase money Liens or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as (i) such Lien attaches only to the asset purchased or acquired, the proceeds thereof and the contracts pursuant to which such asset was acquired, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired or any Refinancing Indebtedness in respect thereof;

(g) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of business and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests;

(h) Liens on amounts deposited to secure the obligations of Borrower in connection with worker's compensation or other unemployment insurance;

(i) Liens on amounts deposited to secure the obligations of Borrower in connection with the making or entering into of bids, tenders or leases in the ordinary course of business and not in connection with the borrowing of money;

(j) Liens on amounts deposited to secure the reimbursement obligations of Borrower with respect to surety or appeal bonds obtained in the ordinary course of business;

(k) with respect to any real property owned or leased by Borrower, survey exceptions or encumbrances, easements or reservations, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of such real properties, which do not materially interfere with the business of Borrower;

(l) rights of setoff or bankers' liens upon deposits of cash in favor of Lender solely to the extent incurred in connection with the maintenance of such deposit accounts with Lender in the ordinary course of business;

(m) Liens in favor of customs authorities arising as a matter of law to secure customs duties in connection with the importation of goods; and

(n) Liens (not otherwise specifically permitted in this definition of Permitted Liens) which are agreed to in writing by Lender in its sole discretion.

"Permitted Protest" means the right of Borrower to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment, provided that (a) a reserve with respect to such obligation is established on the books and records of Borrower in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by Borrower in good faith, and (c) Lender is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Lender's Liens.

"Permitted Purchase Money Indebtedness" means Purchase Money Indebtedness incurred after the Closing Date in an aggregate principal amount outstanding not to exceed \$50,000 at any time.

"Permitted Variance" has the meaning specified therefor in Section 7.23.

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Petition Date" has the meaning specified therefor in the preamble to this Agreement, but in no event will it be later than July 31, 2014.

“Pipeline Period” has the meaning specified therefor in the definition of “Carve-Out”.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of Borrower or any ERISA Affiliate or any such Plan to which Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Preferred Stock” means, as applied to the Stock of any Person, the Stock of any class or classes (however designated) that is preferred with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Stock of any other class of such Person.

“Prepetition Obligations” means amounts outstanding deemed as of the Petition Date under the Existing Credit Agreement and the Processing Agreements.

“Prepetition Payment” means a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Indebtedness or trade payables (including, without limitation, in respect of reclamation claims) or other claims against Borrower, in each case arising prior to the Petition Date.

“Prime Rate” means at any time the rate of interest most recently announced by Lender at its principal office as its Prime Rate, with the understanding that the Prime Rate is one of Lender’s base rates, and serves as the basis upon which effective rates of interest are calculated for those loans making reference to it, and is evidenced by its recording in such internal publication or publications as Lender may designate. Each change in the rate of interest shall become effective on the date each Prime Rate change is announced by Lender.

“Proceeds” has the meaning specified therefor in Schedule 1.1, definition of “Collateral”.

“Processing Agreements” include the following agreements by and between Lender and Borrower, as any may have been amended, restated, supplemented, or otherwise modified, replaced or refinanced from time to time: (i) the ISO Agreement between Bancorp and Debtor, dated May 31, 2005, the First Amendment to the ISO Agreement between Bancorp and Debtor, dated June 1, 2010, and the Second Amendment to the ISO Agreement between Bancorp and Debtor, dated November 23, 2011; (ii) the Processor Agreement between Bancorp and Debtor, effective May 31, 2005, and the First Amendment to the Processor Agreement between Bancorp and Debtor, dated June 1, 2010; (iii) the Sponsorship Agreement between Bancorp and Debtor, dated May 31, 2005, and the First Amendment to the Sponsorship Agreement between Bancorp and Debtor, dated June 1, 2010; and (iv) Originating Depository Financing Institution Agreement, dated June 15, 2007.

“Professional Fee Payments” has the meaning specified therefor in the definition of “Carve-Out”.

“Prohibited Preferred Stock” means any Preferred Stock that by its terms is mandatorily redeemable or subject to any other payment obligation (including any obligation to pay dividends, other than dividends of shares of Preferred Stock of the same class and series payable in kind or dividends of shares of common stock) on or before a date that is less than one year after the Termination Date, or, on or before the date that is less than one year after the Termination Date, is redeemable at the option of the holder thereof for cash or assets

or securities (other than distributions in kind of shares of Preferred Stock of the same class and series or of shares of common stock).

“Projections” means Borrower’s forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, all prepared on a basis reasonably consistent with Borrower’s historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

“Protective Advance” has the meaning specified therefor in Section 2.2(d).

“PTO” means the United States Patent and Trademark Office.

“Purchase Agreement” has the meaning set forth in Section 5.30 of Exhibit C attached hereto.

“Purchase Money Indebtedness” means Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within 30 days after, the acquisition, construction or improvement of any fixed assets for the purpose of financing all or any part of the cost of acquisition, construction or improvement thereof.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Refinancing Indebtedness” means refinancings, renewals, or extensions of Indebtedness so long as:

(a) such refinancings, renewals, or extensions do not result in an increase in the principal amount of the Indebtedness so refinanced, renewed, or extended,

(b) such refinancings, renewals, or extensions do not result in a shortening of the average weighted maturity (measured as of the refinancing, renewal, or extension) of the Indebtedness so refinanced, renewed, or extended, nor are they on terms or conditions that, taken as a whole, are or could reasonably be expected to be materially adverse to the interests of Lender,

(c) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable to the Lender as those that were applicable to the refinanced, renewed, or extended Indebtedness, and

(d) the Indebtedness that is refinanced, renewed, or extended is not recourse to any Person that is liable on account of the Obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended.

“Remedial Action” means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial

operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

“Repay in Full” see definition of “Payment in Full”.

“Reorganization Plan” means a plan or plans of reorganization in the Case.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Restricted Junior Payment” means (a) declaration or payment of any dividend or the making of any other payment or distribution on account of Stock issued by Borrower to the direct or indirect holders of such Stock, (b) any purchase, redemption, or other acquisition or retirement for value of any Stock issued by Borrower, and (c) any payment in respect of any Indebtedness owed by Borrower other than the Obligations, the Prepetition Obligations and, to the extent such payment does not conflict with any subordination agreement related thereto, the Permitted Indebtedness.

“Revolver Usage” means, as of any date of determination, the sum of the amount of outstanding Advances.

“Revolving Credit Facility” means the \$5,000,000 revolving line of credit facility described in Section 2.1 pursuant to which Lender provides Advances to Borrower.

“Sale” means the sale under section 363 of the Bankruptcy Code of a portion of, or substantially all of, the assets of the estate of Borrower’s Insolvency Proceeding (in a single transaction or a series of transactions) or a merger or consolidation having a similar effect, in an amount necessary to Pay in Full the Obligations.

“Sale Order” means an order or orders of the Bankruptcy Court approving the Purchase Agreement, and approving, authorizing and directing Borrower to enter into the Purchase Agreement and to consummate the Transactions (as defined therein).

“Sanctioned Entity” means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

“Sanctioned Person” means a person named on the list of Specially Designated Nationals maintained by OFAC.

“S&P” has the meaning specified therefor in the definition of Cash Equivalents.

“SEC” means the United States Securities and Exchange Commission and any successor thereto.

“Securities Account” means a securities account (as that term is defined in the Code).

“Stock” means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other “equity security” (as such term is

defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

“Stock Pledge” means the Stock Pledge and Security Agreement, dated April 11, 2011, by Raymond Moyer in favor of Lender.

“Subsidiary” of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the shares of Stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

“Superpriority Claim” means a claim against Borrower in the Case which is an administrative expense claim having priority over any and all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code.

“Supporting Obligations” means supporting obligations (as such term is defined in the Code), and includes letters of credit and guaranties issued in support of Accounts, Chattel Paper, documents, General Intangibles, instruments or Investment Related Property.

“Taxes” means any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments and all interest, penalties or similar liabilities with respect thereto; provided, however, that Taxes shall exclude (i) any tax imposed on the net income or net profits of Lender (including any branch profits taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof in which Lender is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which Lender’s principal office is located in each case as a result of a present or former connection between Lender and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from Lender having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under this Agreement or any other Loan Document), and (ii) any U.S. withholding taxes imposed under FATCA.

“Termination Date” has the meaning specified therefor in Section 2.7 of this Agreement

“Trademark Security Agreement” means each Trademark Security Agreement executed and delivered by Borrower in favor of Lender, in form and substance reasonably acceptable to Lender.

“Trademarks” means any and all trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including (i) the trade names, registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule 5.9 to the Information Certificate, (ii) all renewals thereof, (iii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iv) the right to sue for past, present and future infringements and dilutions thereof, (v) the goodwill of Borrower’s business

symbolized by the foregoing or connected therewith, and (vi) all of Borrower's rights corresponding thereto throughout the world.

"Triggering Event" means the date Lender provides to Borrower, Borrower's counsel and the Official Committee's counsel, written notice of an Event of Default. Notice by electronic mail shall be authorized and deemed received upon transmittal.

"United States" or **"U.S."** means the United States of America.

"URL" means "uniform resource locator," an internet web address.

"Voidable Transfer" has the meaning specified therefor in Section 16.7 of this Agreement.

b. **Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP, consistently applied. Whenever used herein, the term "financial statements" shall include the footnotes and schedules thereto. Whenever the term "Borrower" is used in respect of a financial covenant or a related definition, it shall be understood to mean Borrower, unless the context clearly requires otherwise.

c. **Code.** Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein. The meaning of any term defined herein by reference to the Code will not be limited by reason of any limitation set forth on the scope of the Code, whether under Section 9-109 of the Code, by reason of federal preemption or otherwise.

d. **Construction.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the indefeasible repayment in full in cash or immediately available funds (or in the case of obligations with respect to Bank Products, providing Bank Product Collateralization) of all of the Obligations (including the payment of any Lender Expenses that have accrued irrespective of whether demand has been made therefor and the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations)). Any reference herein to any Person shall be construed to include such Person's successors and assigns, subject to the limitations on assignment and

succession contained herein and/or in any other Loan Document. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

e. **Schedules and Exhibits.** All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

Schedule 3.5

ACKNOWLEDGEMENT OF DEBT AND AGREEMENTS

This Acknowledgement of Debt and Agreements (the "Ratification Agreement"), effective as of July __, 2014 (the "Effective Date"), is made by PHOENIX PAYMENT SYSTEMS, INC., a Delaware Corporation ("Debtor"), for the benefit of THE BANCORP BANK, a Delaware banking institution, and its successors and assigns ("DIP Lender").

Debtor hereby agrees as follows:

The Debtor acknowledges, ratifies, and reaffirms (i) that as of the Effective Date, it is indebted to the DIP Lender under the Processing Agreements and Prepetition Credit Documents (both of which as defined below), including, without limitation, all principal, accrued interest, unpaid fees, and expenses (including attorneys' fees), without defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than \$6,176,681.00 as of July 31, 2014 (provided however, that Borrower shall retain any rights under the Existing Credit Agreement to review estimated fees included within the afore-referenced amounts), plus any advances, loans, indemnification obligations, fees, forbearance fees, sponsorship fees and expenses (including attorneys' fees) made after that date until the Effective Date, in respect of loans and advances by or in favor of the DIP Lender pursuant to and in accordance with the terms of the following, and (ii) except as provided in Paragraph 5 of the Second Forbearance Agreement and except as such representations, warranties, covenants, and agreements may have been amended, modified, and/or superseded by the Senior Secured Debtor-In-Possession Credit and Security Agreement and related documents, all of its representations, warranties, covenants and agreements contained in and in accordance with the terms of the following, all of which the Debtor ratifies:

(a) the ISO Agreement between DIP Lender and Debtor, dated May 31, 2005, and all related schedules attached thereto, the First Amendment to the ISO Agreement between DIP Lender and Debtor, dated June 1, 2010, and the Second Amendment to the ISO Agreement between Bancorp and Phoenix, dated November 23, 2011;

(b) the Processor Agreement between DIP Lender and Debtor, effective May 31, 2005, and the First Amendment to the Processor Agreement between DIP Lender and Debtor, dated June 1, 2010 (collectively, the "Processor Agreement");

(c) the Sponsorship Agreement between DIP Lender and Debtor, dated May 31, 2005, the First Amendment to the Sponsorship Agreement between DIP Lender and Debtor, dated June 1, 2010;

(d) the Originating Depository Financing Institution Agreement, dated June 15, 2007, between DIP Lender and Debtor;

(e) the financial accommodation letter from DIP Lender to Debtor accepted on April 11, 2012 and the exhibits thereto including that certain Security Agreement, dated April 11, 2012, between DIP Lender and Debtor, as amended on June 27, 2012, and any subsequent amendments;

(f) the Acknowledgement of Debt and Forbearance Agreement, dated June 27, 2012, by and among the DIP Lender and Raymond Moyer, individually and as guarantor/surety, including (a) the Guaranty, dated June 27, 2012, by Debtor for the benefit of DIP Lender of Promissory Note and Home Equity Line of Credit Agreement between DIP Lender, as lender, and Raymond Moyer, as borrower, dated October 9, 2002 and June 28, 2010;

(g) that certain Amendment to Forbearance Agreement, dated on or about February 8, 2013, by and among the DIP Lender, Debtor and Moyer;

(h) that certain Second Forbearance Agreement, dated May 9, 2014, by and between DIP Lender and the Debtor; and

(i) that certain Agreement and Acknowledgement of the Stock Pledge executed by Debtor on April 11, 2012.

and the terms of the following, which Debtor acknowledges:

(j) the Stock Pledge and Security Agreement, dated April 11, 2011, between DIP Lender and Moyer.

Acknowledged and Agreed to:

Phoenix Payment Systems, Inc.

By: *Michael Jacoby*
Title: *Chief Restructuring Officer*

Signature: *Michael Jacoby*

Date: *7/31/14*

Schedule 6.1**TO SENIOR SECURED DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

In addition to the items identified in Schedule 6.2 hereof, deliver to Lender each of the financial statements, reports, or other items set forth below at the following times, in form satisfactory to Lender:

as soon as available, but in any event within 45 days after the end of each Fiscal Month:	(a) an unaudited balance sheet, income statement, and statement of cash flow covering the operations of Borrower during such period and compared to the prior period; and (b) a Compliance Certificate.
as soon as available, but in any event within 45 days after the end of each Fiscal Quarter:	(a) an unaudited balance sheet, income statement, and statement of cash flow covering the operations of Borrower during such period and compared to the prior period; and (b) a Compliance Certificate.
as soon as available, but in any event within 90 days after the end of each Fiscal Year:	(a) an unaudited balance sheet, income statement, and statement of cash flow covering the operations of Borrower during such period and compared to the prior period; and (b) a Compliance Certificate.
as soon as available, but in any event within 30 days before the start of each Fiscal Year:	(a) copies of Borrower's Projections, in form and substance (including as to scope and underlying assumptions) satisfactory to Lender, in its sole discretion, for such Fiscal Year, on a monthly basis, certified by the chief financial officer of Borrower as being such officer's good faith estimate of the financial performance of Borrower during the period covered thereby.

Schedule 6.2

**TO SENIOR SECURED DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

Provide Lender with each of the documents set forth below at the following times in form and substance satisfactory to Lender:

Continue to timely provide the Financial Reporting as set forth in paragraph 15 of the Second Forbearance Agreement, dated May 9, 2014:

15. Financial Reporting. Within 45 days of the end of each month, with the first for the month of February 2014 being due by April 14, 2014, Phoenix shall also provide to Bancorp: (i) unaudited consolidated income statements, cash flow statements and balance sheets, prepared in accordance with GAAP; and (ii) detailed information concerning merchant activities and transactions, including a comparison for each merchant or financial institution client of Phoenix's top 30 merchant/financial institution clients, showing the transactions and activity during the current month and the transactions and activity of such merchant for each month during the immediately preceding 12 month period (collectively, the "Financials"). Such Financials shall contain such information, including, but not limited to, detailed supporting information with respect to, among other things, liabilities, payables, receivables, payroll, revenue, expenses, and a list of employees as may be requested by Bancorp at any time. From time to time as requested by Bancorp, (i) Bancorp or its designee shall have complete access to all of Phoenix's premises after reasonable notice to Phoenix for the purposes of inspecting, verifying, and auditing Phoenix's books and records, and (ii) Phoenix shall promptly furnish to Bancorp such copies of such books and records or extracts therefrom as Bancorp may request. Notwithstanding anything contained in this Agreement, in no event shall Phoenix be relieved of any obligations to report and/or disclose information to Bancorp under any or all of the Other Governing Documents, all of which requirements shall remain in full force and effect. In addition, upon reasonable request by Bancorp, Phoenix shall provide detailed information concerning the activities and transactions of any merchant or financial institution client that is not one of Phoenix's top 30 merchant/financial institution clients, including a comparison showing the transactions and activity during the current month and the transactions and activity of such merchant for each month during the immediately preceding 12 month period.

Continue to timely provide the Asset Information as set forth in paragraph 16 of the Second Forbearance Agreement, dated May 9, 2014:

16. Asset Information. On or before April 30, 2014, unless otherwise agreed in by the Parties, Phoenix shall also provide to Bancorp information concerning all assets in which Phoenix has an ownership or other property interest, including, but not limited to, intellectual property. Such information shall be sufficient under GAAP to demonstrate Phoenix's ownership and shall

include, among other things, a complete listing and detailed description of: the assets, the owners of such assets, Phoenix's ownership or other property interest (including whether a respective asset is owned outright, licensed, or held under any other legal entitlement), Phoenix's actual knowledge of any liens or encumbrances upon such assets and the current location of such assets, and a description of any pending litigation or other adverse action that may impair or otherwise adversely affect title to such assets. In full compliance with this provision, Phoenix will supply Bancorp with: (a) a copy of the March 24, 2014 Intellectual Property listing; (b) the detailed fixed asset listing dated December 31, 2011, which supported the \$755,078 of Property and Equipment, net reflected in EPX's audited financial statements, with a confirmation of which of such assets continue to be in EPX's possession and which are not; and (c) a list, and evidence of ownership, of fixed assets acquired on or after January 1, 2012.

Continue to timely provide the Employee Reporting as set forth in paragraph 18 of the Second Forbearance Agreement, dated May 9, 2014:

18. Employee Reporting. Within ten (10) Business Days of the Effective Date, Phoenix shall provide to Bancorp a list of all employees who, since February 1, 2014, have resigned or have been terminated, for any reason and regardless of whether such termination was with or without cause, identifying such employees by name and the title for the position held and a description of the circumstances surrounding such resignation or termination. Continuing after such first report, on a weekly basis with the first such weekly report being due on May 5, 2014, Phoenix shall provide a list of all employees who, during the immediately preceding week, have resigned or have been terminated, for any reason and regardless of whether such termination was with or without cause, identifying such employees by name and the title for the position last held by each such employee and a description of the circumstances surrounding such resignation or termination.

The Compliance Report as and when due pursuant to Section 6.19 of the Senior Secured Debtor-In-Possession Credit and Security Agreement.

All reporting required under the Processing Agreements when due.

EXHIBIT A

**TO SENIOR SECURED DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

FORM OF COMPLIANCE CERTIFICATE

[on Borrower's letterhead]

To: The Bancorp Bank

Re: Compliance Certificate dated [_____]

Ladies and Gentlemen:

Reference is made to that certain Senior Secured Debtor-In-Possession Credit and Security Agreement (the "Credit Agreement") dated as of July [___], 2014, by and between The Bancorp Bank ("Lender") and Phoenix Payment Systems, Inc. ("Borrower"). Capitalized definitional terms used in this Compliance Certificate have the meanings set forth in the Credit Agreement unless specifically defined herein.

Pursuant to Schedule 6.1 of the Credit Agreement, the undersigned officer of Borrower hereby certifies that:

1. Attached is the required financial information of Borrower which are required to be furnished to Lender pursuant to Section 6.1 of the Credit Agreement for the period ended , _____ (the "Reporting Date"). Such financial information has been prepared in accordance with GAAP [(except for year-end adjustments and the lack of footnotes)]*, and fairly presents in all material respects the financial condition of Borrower.
2. Such officer has reviewed the terms of the Credit Agreement and has made, or caused to be made under his/her supervision, a review in reasonable detail of the transactions and condition of Borrower during the accounting period covered by the financial statements delivered pursuant to Schedule 6.1 of the Credit Agreement.
3. Such review has not disclosed the existence on and as of the date hereof, and the undersigned does not have knowledge of the existence as of the date hereof, of any event or condition that constitutes a Default or Event of Default.
4. The representations and warranties of Borrower set forth in the Credit Agreement and the other Loan Documents are true and correct in all material respects on and as of the date hereof (except to the extent they relate to a specified date).

IN WITNESS WHEREOF, this Compliance Certificate is executed by the undersigned this ____ day of _____, _____.

**PHOENIX PAYMENT SYSTEMS,
INC.**

By: _____
Name: _____
Title: _____

* Include bracketed language with monthly and quarterly unaudited financial statements.
Exclude bracketed language with annual audit reports

EXHIBIT B

**TO SENIOR SECURED DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

CONDITIONS PRECEDENT

THE OBLIGATION OF LENDER TO MAKE ITS INITIAL EXTENSION OF CREDIT PROVIDED FOR IN THIS AGREEMENT IS SUBJECT TO THE FULFILLMENT, TO THE SATISFACTION OF LENDER, OF EACH OF THE FOLLOWING CONDITIONS PRECEDENT:

- (a) the Closing Date shall occur on or before August 3, 2014;
- (b) Lender shall have received a certificate from the Treasurer of Borrower (i) attesting to the resolutions of the Board of Directors of Borrower authorizing its execution, delivery, and performance of the Loan Documents, (ii) authorizing specific officers to execute the same, and (iii) attesting to the incumbency and signatures of such specific officers;
- (c) Lender shall have received copies of the articles of incorporation and bylaws of Borrower, as amended, modified, or supplemented to the Closing Date, certified as true, correct and complete by the Treasurer of Borrower;
- (d) Borrower shall have received all licenses, approvals or evidence of other actions required by any Governmental Authority in connection with the execution and delivery by Borrower of the Loan Documents or with the consummation of the transactions contemplated thereby;
- (e) all other documents and legal matters in connection with the transactions contemplated by this Agreement shall have been delivered, executed, or recorded and shall be in form and substance satisfactory to Lender;
- (f) Lender shall have received such other items as Lender shall have reasonably requested;
- (g) Lender shall have received, not later than three Business Days following the Petition Date, a certified copy of the Interim Order by the Bankruptcy Court, which Interim Order shall, among other things, (i) authorize Borrower to enter into this Agreement and the other Loan Documents, in the amount and on the terms set forth in this Agreement and the other Loan Documents, (ii) approve the Loan Documents and grant the Lien and Superpriority Claim contemplated thereby and approve the fees provided for in this Agreement and (iv) not have been vacated, reversed, modified, amended or stayed;
- (h) all first-day and related orders entered by the Bankruptcy Court in the Case shall be in form and substance satisfactory to Lender;

- (i) Lender shall have received all fees required to be paid and all Lender Expenses (including the reasonable fees and expenses of Lender's legal counsel and other professionals) on or before the Closing Date;
- (j) no litigation shall have commenced which has not been stayed by the automatic stay or by the Bankruptcy Court which, if successful, would result in a Material Adverse Change other than the Case;
- (k) Lender shall have received a legal opinion of counsel to Borrower in form and substance satisfactory to Lender;
- (l) the representations and warranties of Borrower contained in this Agreement and/or in the other Loan Documents shall remain true and correct in all material respects;
- (m) no Default or Event of Default shall have occurred and be continuing;
- (n) the Bankruptcy Court shall have entered the Interim Order and such Interim Order shall be in effect, not have been stayed or otherwise subject to appeal and not have been amended or modified;
- (o) if the Closing Date is more than 35 days after Petition Date, the Bankruptcy Court shall have entered the Final Order and such Final Order shall be in effect, not have been stayed or otherwise subject to appeal and not have been amended or modified;
- (p) the entering into of the Loan Documents and the making of Advances thereunder shall not violate any Applicable Law and shall not be enjoined, temporarily, preliminarily or permanently;
- (q) at the option of Lender, a Uniform Commercial Code financing statement shall have been filed with the Secretary of State of the State of Delaware listing Borrower as debtor and Lender as secured party perfecting Lender's security interest in the Collateral;
- (r) all deposit account control agreements or similar control agreements with Lender in effect on the Petition Date, if any, shall remain in full force and effect;¹
- (s) Lender shall have received the initial Budget in form and substance acceptable to Lender;
- (t) the Interim Order and the Final Order shall be in form and substance satisfactory to Lender and all other motions and other documents to be filed with and submitted to the Bankruptcy Court in connection with this Agreement and the approval thereof shall be in form and substance reasonably satisfactory to Lender;
- (u) Borrower's corporate structure shall not be altered;
- (v) Lender shall have received a certificate of good standing of Borrower dated within ten Business Days of the Closing Date; and

¹ Discuss.

(w) Borrower shall maintain insurance reasonably satisfactory to Lender and Lender shall have received additional insured and lender loss payee insurance certificates and endorsements, in each case satisfactory to Lender.

EXHIBIT C

**TO SENIOR SECURED DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

REPRESENTATIONS AND WARRANTIES

For the avoidance of doubt, the representations and warranties set forth on Exhibit C are subject, in each case, to the effect of the Orders.

5.1 Due Organization and Qualification; Subsidiaries.

- (a) Borrower is duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as presently conducted on the date hereof. Borrower is duly qualified or authorized to do business and is in good standing under the laws of each jurisdiction in which it leases real property or in which the conduct of its business or the ownership of its property requires such qualification or authorization, except where the failure to be so qualified, authorized or in good standing would not be reasonably likely to result in a Material Adverse Change. Borrower has delivered or made available to Lender complete and correct copies of its certificate of incorporation and by-laws (and all similar governing documents), and all amendments thereto. Borrower has all requisite power and authority to own, lease, operate and hold the assets of Borrower's business as conducted on the date hereof and to carry on Borrower's business as conducted on the date hereof. Borrower does not own, directly or indirectly, any capital stock of, or equity ownership or voting interest in, any other Person.
- (b) Set forth on Schedule 5.1(b) to the Information Certificate is a complete and accurate description of the authorized capital Stock of Borrower, by class, and, as of the Closing Date, a description of the number of shares of each such class that are issued and outstanding. Other than as described on Schedule 5.1(b) to the Information Certificate, as of the Closing Date, there are no subscriptions, options, warrants, or calls relating to any shares of any capital Stock of Borrower, including any right of conversion or exchange under any outstanding security or other instrument. Borrower is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital Stock or any security convertible into or exchangeable for any of its capital Stock.
- (c) As of the Closing Date, Borrower has no Subsidiaries.

5.2 Due Authorization; No Conflict. (a) Subject to the entry of the Orders, as to Borrower, the execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of Borrower, (b) as to Borrower, the execution, delivery, and performance by Borrower of the Loan Documents do not (i) violate any material provision of federal, state, or local law or regulation applicable to Borrower, the Governing Documents of Borrower, or any order, judgment, or decree of any court or other Governmental Authority binding on Borrower, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a

default under any Material Contract or any Material License of Borrower, in each case the effect of which has not been stayed by the automatic stay or the Bankruptcy Court or (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of Borrower, other than Permitted Liens. Each Loan Document and the Existing Credit Agreement has been duly executed and delivered by Borrower and, subject to Bankruptcy Court approval, is the legally valid and binding obligation of Borrower and subject to Bankruptcy Court approval, enforceable against Borrower in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

5.3 **Governmental Consents.** Subject to the entry of the Orders, no consent, approval, authorization or other order or other action by, and no notice with, any Governmental Authority is required to be obtained or made by Borrower for the grant of any security interest by Borrower in and to any of the collateral security for the Obligations, including, without limitation, the Collateral, pursuant to this Agreement or any other Loan Document or for the execution, delivery, or performance of this Agreement or any other Loan Document by Borrower, in each case except for any filings or notices contemplated by the Loan Documents and such consents, approvals, authorizations, orders, actions, notices or filings as have been obtained or made.

5.4 **No Material Adverse Change and No Default.** Borrower has delivered the following financial statements (collectively, the "Financial Statements") to Lender and they are attached hereto as Schedule 5.4: (a) the audited balance sheet of Borrower as of December 31, 2011, and the related audited profit and loss statement, and statement of cash flows of Borrower for the fiscal year then ended; (b) the unaudited balance sheets of Borrower as of December 31, 2012 and December 31, 2013, respectively (the latter balance sheet being referred herein as the "Year-End Balance Sheet"), and the related unaudited profit and loss statements, and statements of cash flows of Borrower for each of the fiscal years then ended; and (c) the unaudited balance sheet of Borrower as of May 31, 2014 (the "Interim Balance Sheet") and the related unaudited profit and loss statement, and statement of cash flows of Borrower for the five (5) month period then ended (collectively with the Interim Balance Sheet, the "Interim Financials"). Each of the Financial Statements are true and correct in all material respects and have been prepared in accordance with GAAP; each of the balance sheets included in the Financial Statements fairly and accurately presents the financial condition of Borrower as of its respective date; and each of the profit and loss statements and statements of cash flows included in the Financial Statements fairly and accurately present the results of operations of Borrower for the periods covered thereby. Since the date of the Interim Balance Sheet, no event, circumstance, or change has occurred that has resulted in, or could reasonably be expected to result in, a Material Adverse Change with respect to Borrower, other than those which customarily occur as a result of events and circumstances leading up to and following the commencement the Case.

5.5 **Title to Assets; No Encumbrances.** Borrower has (a) no fee interests in real property, (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of its respective assets reflected in its most recent financial statements delivered pursuant to Section 6.1 and most recent collateral reports delivered pursuant to Section 6.2, in each case except for assets disposed of since the date of such financial statements in the ordinary course

of business or to the extent otherwise permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens.

5.6 **Payment of Taxes.** Except as otherwise permitted under Section 6.5, all tax returns and reports of Borrower required to be filed by any of them have been timely filed, and all taxes and assessments shown on such tax returns to be due and payable by Borrower have been paid when due and payable. Except as otherwise permitted under Section 6.5 all material assessments, fees and other governmental charges upon Borrower and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable. Borrower has made adequate provision in accordance with GAAP for all taxes not yet due and payable. Borrower does not know of any proposed tax assessment against it that is not being actively contested by Borrower diligently, in good faith, and by appropriate action; provided such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

5.7 Reserved.

5.8 Reserved.

5.9 **Intellectual Property.**

(a) Borrower owns, or holds licenses or other similar contractual interests in, all trademarks, trade names, copyrights, patents, and licenses that are necessary to the conduct of its business as conducted on the date hereof. Schedule 5.9 hereto sets forth a complete and accurate list of all Intellectual Property of Borrower. Except to the extent set forth in Schedule 5.9 hereto, Borrower owns or has the sole and exclusive right to use all Intellectual Property listed in section (i) of Schedule 5.9 hereto, and has the right to use all such Intellectual Property used or necessary for the ordinary course of Borrower's business as conducted on the date hereof or proposed to be conducted, and the consummation of the transactions contemplated hereby will not alter or impair any such right.

(b) Except as set forth on Schedule 5.9, (a) none of the Intellectual Property is the subject of any challenge or claim received by Borrower in writing and (b) Borrower has not received any written notice of any default or any event that with notice or lapse of time, or both, would constitute a default under any Intellectual Property License to which Borrower is a party. Except as set forth on Schedule 5.9, no claims have been asserted, and no claims are pending, by any Person regarding the use of any such Intellectual Property, or challenging or questioning the validity or effectiveness of any Intellectual Property License, and there is no basis for any such claim. To the knowledge of Borrower, the use by Borrower of such Intellectual Property in the ordinary course of Borrower's business on the date hereof does not infringe on the rights of any Person.

(c) All of Borrower's software and related applications are PCI-DSS and PA-DSS compliant or certified, as the case may be.

5.10 **Material Contracts.**

(a) Schedule 5.10(a) sets forth all of the following contracts to which Borrower is a party or by which Borrower is bound or by which the assets of Borrower's business as conducted on the date hereof may be bound or affected (collectively, the "Material Contracts"):

(i) Contracts with any Affiliate or current or former officer or director, or current employee, consultant or stockholder of Borrower, or to the knowledge of Borrower, any partnership, corporation, joint venture or any other entity in which any such Person has a controlling interest;

(ii) other than the Purchase Agreement, contracts for the sale of any of the assets of Borrower's business as conducted on the date hereof, other than in the ordinary course of Borrower's business as conducted on the date hereof, or for the grant to any Person of any preferential rights to purchase any of the assets or properties of Borrower;

(iii) Contracts with Lender, including the Processing Agreements;

(iv) Contracts for the payment of any bonuses or other amounts, in each case that are due and payable in connection with transactions contemplated by the Purchase Agreement;

(v) Contracts relating to incurrence of Indebtedness (including the guaranty of any Indebtedness) or the making of any loans;

(vi) bonds or other security agreements provided by any party in connection with Borrower's business as conducted on the date hereof;

(vii) joint venture agreements relating to the assets, properties or Borrower's business as conducted on the date hereof or by or to which Borrower or any of its assets or properties are bound or subject;

(viii) Contracts under which Borrower agrees to indemnify any party, to pay liquidated damages, to share tax liability of any party, or to refrain from competing with any party;

(ix) Contracts involving Borrower which limit its ability (A) to compete in any market or geographical area, or (B) to solicit or hire personnel of another company or to solicit customers or merchants of another company, except, in the case of clause (B), any contracts between Borrower and any of Borrower's merchants;

(x) Contracts which involve the expenditure by Borrower of more than \$25,000 in the aggregate or require performance by any party more than one (1) year from the date hereof that, in either case, are not terminable by Borrower without penalty on less than ninety (90) days' notice;

(xi) Tri-party agreements and other contracts with any merchant that represent the top fifty (50) of Borrower's merchants by gross profit for the twelve (12) month period ending on April 30, 2014;

(xii) Contracts with any independent sales organization ("ISO") or referral agent ("Agent") whereby ISO or Agent earned more than \$10,000 for the twelve (12) month period ending April 30, 2014; and

(xiii) any other contract material to the Borrower's business as conducted on the date hereof.

(b) Borrower has delivered or made available to Lender true, correct and complete copies of all Material Contracts, together with all modifications, amendments, and supplements thereto. On the date hereof, except as set forth on Schedule 5.10(b), each Material Contract is in full force and effect and is valid and binding on Borrower and, to knowledge of Borrower, on the counterparties therein. Other than relating to Borrower's inability to pay pre-petition amounts owed under certain Material Contracts due to the commencement of the Bankruptcy Case, the implementation of the automatic stay under Section 362 of the Bankruptcy Code, or as set forth on Schedule 5.10(b), Borrower is not and has not been in material breach of any of the provisions of any Material Contract, nor is any other party to any such contract in default thereunder in any material respect. Other than relating to Borrower's inability to pay pre-petition amounts owed under certain Material Contracts due to the commencement of the Bankruptcy Case, the implementation of the automatic stay under Section 362 of the Bankruptcy Code, or as set forth on Schedule 5.10(b), Borrower has, in all material respects, performed all obligations required to be performed by Borrower to date under each such Material Contract.

5.11 Employee Benefits.

(a) Schedule 5.11(a) lists all "employee benefit plans" (as defined in Section 3(3) of and subject to ERISA) and all other plans or agreements (other than governmental plans, statutorily required benefit arrangements and individual grant agreements) providing bonus, incentive compensation, deferred compensation, change in control, pension, welfare benefit, severance, sick leave, vacation pay, salary continuation, disability, life insurance, and educational assistance as to which Borrower have any Liability for current or former employees of Borrower (the "Employee Benefit Plans").

(b) True, correct and complete copies of each Employee Benefit Plan have been made available to Lender, along with the following documents with respect to each such Employee Benefit Plan (if applicable): (i) any associated trust, custodial, insurance or service agreements; (ii) the most recent Form 5500 and schedules thereto; (iii) the most recent IRS determination letter and any governmental advisory opinions, rulings, compliance statements, closing agreements, or similar materials specific to each such Employee Benefit Plan; and (iv) the most recent summary plan description (including letters or other documents updating such description).

(c) Each Employee Benefit Plan is and has heretofore been maintained and operated in compliance with the terms of such Employee Benefit Plan and with the requirements prescribed (whether as a matter of substantive Law or as necessary to secure favorable tax treatment) by any and all statutes, governmental or court orders, or governmental rules or regulations in effect from time to time, including but not limited to the ERISA and the IRC, in each case applicable to such Employee Benefit Plan. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the IRC, has been determined to be so qualified by the IRS and nothing has occurred which has resulted or is likely to result in the revocation of such determination or which requires or could require action under the compliance resolution programs of the Internal Revenue Service to preserve such qualification.

(d) Except as set forth on Schedule 5.11(d) hereto:

(i) there is no pending or, to the knowledge of Borrower, threatened legal action, proceeding or investigation, other than routine claims for benefits,

concerning any Employee Benefit Plan or, to the knowledge of Borrower, any fiduciary or service provider thereof and, to the knowledge of Borrower, there is no basis for any such legal action or proceeding;

(ii) no liability (contingent or otherwise) to the Pension Benefit Guaranty Corporation (“PBGC”) or any multi-employer plan within the meaning of Section 3 of ERISA has been incurred by Borrower (other than insurance premiums satisfied in due course);

(iii) no Employee Benefit Plan nor any party in interest with respect thereof, has engaged in a prohibited transaction which could subject any of Borrower directly or indirectly to liability under Section 409 or 502(i) of ERISA or Section 4975 of the IRC;

(iv) no communication, report or disclosure has been made which, at the time made, did not accurately reflect the terms and operations of any Employee Benefit Plan;

(v) no Employee Benefit Plan provides welfare benefits subsequent to termination of employment to employees or their beneficiaries (except to the extent required by applicable state insurance laws and Title I, Part 6 of ERISA); and

(vi) Borrower has not undertaken to maintain any Employee Benefit Plan for any period of time and each such Plan is terminable at the sole discretion of the sponsor thereof, subject only to such constraints as may be imposed by applicable Law.

(e) With respect to each Employee Benefit Plan for which a separate fund of assets is or is required to be maintained, full and timely payment has been made of all amounts that Borrower is required, under the terms of each such Plan, to have paid as contributions to that Employee Benefit Plan through the Closing Date Effective Time. The current value of the assets of each such Employee Benefit Plan, as of the end of the most recently ended plan year of that Employee Benefit Plan, exceeded the current value of all accrued benefits under that Employee Benefit Plan.

(f) Except as set forth on Schedule 5.11(f), the execution of this Agreement and the consummation of the transactions contemplated hereby, by itself or in combination in any other event (regardless of whether that other event has or will occur), will not result in any payment (whether of severance pay or otherwise) becoming due from any Employee Benefit Plan to any current or former director, officer, consultant or employee of Borrower or result in the vesting, acceleration of payment or increases in the amount of any benefit payable to or in respect of any such current or former director, officer, consultant or employee.

(g) None of the Employee Benefit Plans is a “multiemployer plan” (as defined in Section 3(37) of ERISA) or is or has been subject to Sections 4063 or 4064 of ERISA, or is subject to Title IV of ERISA.

(h) For purposes of this Section 5.11, “multi-employer plan”, “party in interest”, “current value”, “accrued benefit”, “reportable event” and “benefit liability” have the same meaning assigned such terms under Sections 3, 4043(b) or 4001(a) of ERISA, and “affiliate” means any entity which under Section 414 of the IRC is treated as a single employer with Borrower.

5.12 **Labor Matters.**

(a) There is no labor or collective bargaining agreement, works council or similar agreement to which Borrower is a party, and no collective bargaining agreement is currently being negotiated by Borrower. Borrower is in compliance in all material respects with all federal and state laws respecting employment and employment practices, terms and conditions of employment, wages and hours and nondiscrimination in employment, and is not engaged in any unfair labor practice. There is no charge pending or, to the knowledge of Borrower, threatened against Borrower alleging unlawful discrimination in employment practices before any court or agency and there is no charge of or proceeding with regard to any unfair labor practice against Borrower pending before the National Labor Relations Board. There is no labor strike, dispute, slow-down or work stoppage actually pending or, to the knowledge of the Borrower, threatened against or involving Borrower. No one has petitioned within the last three (3) years, and no one is now petitioning, for union representation of Borrower's employees. Borrower is, and at all times since November 6, 1986, has been, in compliance with the requirements of the Immigration Reform Control Act of 1986.

(b) Except as set forth on Schedule 5.12(b), there have not been, at any time during the previous five (5) years, any (i) strikes, work stoppages, work slowdowns or lockouts pending or, to the knowledge of Borrower, threatened against or involving Borrower, or (ii) unfair labor practice charges, grievances or complaints pending or, to the knowledge of Borrower, threatened by or on behalf of any employee or group of employees of Borrower.

5.13 **Litigation.** Except for the Bankruptcy Case and as set forth on Schedule 5.13, there are no Legal Proceedings pending or, to the knowledge of Borrower, threatened against Borrower, or to which Borrower is otherwise a party before any Governmental Body, which, (i) questions the validity of this Agreement, any Loan Document, or challenges any of the transactions contemplated hereby or thereby, or (ii) if adversely determined, would be reasonably likely to adversely and materially affect Borrower's business as conducted on the date hereof, nor, to the knowledge of the Borrower, is there any basis for any such Legal Proceeding.

5.14 Reserved.

5.15. **Compliance with Laws; Licenses.**

(a) Borrower (a) is not in violation in any material respect of any applicable laws, rules, regulations, executive orders, or codes (including Environmental Laws) or (b) subject to the entry of the Orders, is not subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(b) Set forth on Schedule 5.15 to the Information Certificate (as such Schedule may be updated from time to time in accordance herewith) is a description of each Material License of Borrower as of the most recent date on which Borrower provided its Compliance Certificate pursuant to Section 6.1; provided, however, that Borrower may amend Schedule 5.15 to the Information Certificate to add an additional Material License or to remove a Material License which has expired at the end of its normal term or which has

been terminated and the failure to maintain such Material License could not reasonably be expected to result in a Material Adverse Change, so long as such amendment occurs by written notice to the Lender on the date that Borrower provides its Compliance Certificate.

5.16 Jurisdiction of Organization; Location of Chief Executive Office; Organizational Identification Number; Commercial Tort Claims.

- (a) The exact legal name of (within the meaning of Section 9-503 of the Code) and jurisdiction of organization of Borrower is set forth on Schedule 5.16(a) to the Information Certificate (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).
- (b) The chief executive office of Borrower is located at the address indicated on Schedule 5.16(b) to the Information Certificate (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).
- (c) The tax identification numbers and organizational identification numbers, if any, of Borrower are identified on Schedule 5.16(c) to the Information Certificate (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).
- (d) As of the Closing Date, Borrower holds no Commercial Tort Claims, except as set forth on Schedule 5.16(d) to the Information Certificate.

5.17 Fraudulent Transfer. No transfer of property is being made by Borrower and no obligation is being incurred by Borrower in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of Borrower.

5.18 Deposit Accounts and Securities Accounts. Set forth on Schedule 5.18 to the Information Certificate is a listing of all of the Deposit Accounts and Securities Accounts of Borrower, including, with respect to each bank or securities intermediary (a) the name and address of such Person, and (b) the account numbers of the Deposit Accounts or Securities Accounts maintained with such Person.

5.19 Complete Disclosure. All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of Borrower) furnished by or on behalf of Borrower in writing to Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of Borrower) hereafter furnished by or on behalf of Borrower in writing to Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Projections most recently delivered to Lender represent, and as of the date on which any other Projections are delivered to Lender, such additional Projections represent,

Borrower's good faith estimate, on the date such Projections are delivered, of the future performance of Borrower for the periods covered thereby based upon assumptions believed by Borrower to be reasonable at the time of the delivery thereof to Lender.

5.20 **Patriot Act.** To the extent applicable, Borrower is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "**Patriot Act**"). No part of the proceeds of the loans made hereunder will be used by Borrower, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

5.21 **Margin Stock.** Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the loans made to Borrower will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any other purpose, in each case in a manner that violates the provisions of Regulation T, U or X of the Board of Governors of the United States Federal Reserve.

5.22 **Governmental Regulation.** Borrower is not subject to regulation under the investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

5.23 **No Undisclosed Liabilities.** Except to the extent (a) reflected or reserved against in the Year-End Balance Sheet, (b) incurred in the ordinary course of business after the date of the Year-End Balance Sheet and either discharged prior to Closing or reflected or reserved against on the Interim Balance Sheet, (c) described on any Schedule hereto, or (d) of contingent liabilities being disputed in good faith, Borrower has no material Liabilities or obligations of any nature, whether accrued, absolute, contingent or otherwise (including as guarantor or otherwise with respect to obligations of others).

5.24 **OFAC.** Borrower is not in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC. Borrower (a) is not a Sanctioned Person or a Sanctioned Entity, (b) does not have its assets located in Sanctioned Entities, or (c) derives no revenues from investments in, or transactions with, Sanctioned Persons or Sanctioned Entities. No proceeds of any loan made hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity.

5.25 **Collateral.**

(a) Reserved.

(b) **Valid Security Interest.** Subject to Bankruptcy Court approval and the Orders, this Agreement creates a valid security interest in the Collateral of Borrower, to the extent a security interest therein can be created under the Code, securing the payment of the Obligations. Subject to Bankruptcy Court approval and the Orders, except to the extent a security interest in the Collateral cannot be perfected by the filing of a financing statement under the Code, all filings and other actions necessary or desirable to perfect and protect such security interest have been duly taken or will have been taken upon the filing of financing statements listing Borrower, as a debtor, and Lender, as secured party, in the jurisdictions listed next to Borrower's name on Schedule 5.16(a) to the Information Certificate. Upon entry of the Interim Order (or the Final Order, when applicable) and the making of such filings, Lender shall have a first priority perfected security interest in the Collateral of Borrower to the extent such security interest can be perfected by the filing of a financing statement, subject to Permitted Liens.

5.26 **Inventory Records.** Borrower keeps correct and accurate, in all material respects, records itemizing and describing the type, quality, and quantity of its Inventory and the book value thereof.

5.27 **Locations of Inventory and Equipment.** Except as identified in Schedule 5.27 to the Information Certificate (as such Schedule may be updated pursuant to Section 6.14), the Inventory and Equipment (other than vehicles or Equipment out for repair) of Borrower are not stored with a bailee, warehouseman, or similar party other than as permitted in Section 7.17. All Inventory and Equipment that are material to Borrower's business as it is conducted on the date hereof are located only at, or in-transit between or to, the locations identified on Schedule 5.27 to the Information Certificate (as such Schedule may be updated pursuant to Section 6.14).

5.28 Reserved.

5.29 **Prepetition Obligations.** The Prepetition Obligations are hereby reaffirmed.

5.30 **Burdensome Agreements.** Other than the Loan Documents, the Existing Credit Agreement and that certain Asset Purchase Agreement, dated on or about the Petition Date (the "Purchase Agreement"), between Borrower and EPX Acquisition Company, LLC, Borrower has no encumbrance or restriction of any kind on the ability of any such Person to pay or make any dividends or distributions to Borrower, to pay any of the Obligations, to grant a Lien to secure any of the Obligations, to make loans or advances or to transfer any of its property or assets to Borrower.

5.31 **Hedge Obligations.** Borrower has no Hedge Agreements in place with, or owes any Hedge Obligations to, a Bank Product Provider or any other party.

5.32 **Environmental Condition.** Except as set forth on Schedule 5.32 to the Information Certificate, (a) to Borrower's knowledge, no properties or assets of Borrower has ever been used by Borrower in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, in a manner that could reasonably be expected to result in a Material Adverse Change, (b) to Borrower's knowledge, after due inquiry, no properties or assets of Borrower have ever been designated or identified in any manner pursuant to any

environmental protection statute as a Hazardous Materials disposal site, (c) Borrower has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any real property owned or operated by Borrower, and (d) neither Borrower nor any of its facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

5.33 **Indebtedness.** Set forth on Schedule 5.33 to the Information Certificate is a true and complete list of all Indebtedness of Borrower outstanding (or for which commitments are outstanding) immediately prior to the Closing Date that is to remain outstanding immediately after giving effect to the closing hereunder on the Closing Date and such Schedule accurately sets forth the aggregate principal amount of such Indebtedness as of the Closing Date.

5.34 **Reorganization Matters.**

(a) The Case was commenced on the Petition Date in accordance with Applicable Law and proper notice thereof and the proper notice for the hearing for the approval of the Interim Order has been given and proper notice for the hearing for the approval of the Final Order will be given.

(b) After the entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Case having the priority set forth in the Orders.

(c) After the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations will be secured by a valid and perfected Lien having the priority described in the Orders.

(d) The Interim Order (with respect to the period prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order), as the case may be, is in full force and effect and has not been modified or amended without the consent of Lender.

(e) Notwithstanding the provisions of section 362 of the Bankruptcy Code, upon the maturity (whether by acceleration or otherwise) of any of the Obligations, Lender shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court, as more fully set forth in and subject to the Orders.

(f) On the date of any Borrowing hereunder, the Interim Order (or the Final Order, when applicable) shall be in effect, not have been stayed or otherwise subject to appeal and not have been amended or modified. Upon the maturity (whether by the acceleration or otherwise) of any of the obligations of Borrower hereunder and under the other Loan Documents, the Lender shall, subject to the provisions of Section 9 and the Orders, be entitled to immediate payment of such obligations, and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court.

EXHIBIT D

**TO SENIOR SECURED DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

**INFORMATION CERTIFICATE
OF
BORROWER**

Dated:

The Bancorp Bank

In connection with certain financing provided or to be provided by The Bancorp Bank (“Lender”), the undersigned Borrower (“Borrower”) represents and warrants to Lender the following information about Borrower (Capitalized definitional terms not specifically defined shall have the meaning set forth in the Senior Secured Debtor-in-Possession Credit and Security Agreement dated as of [], 2014 between Lender and Borrower (the “Agreement”)):

1. Attached as Schedule 5.1(b) is a complete and accurate description, in all material respects, of (i) the authorized Stock of Borrower, by class, and the number of shares issued and outstanding and the names of the owners thereof (including stockholders, members and partners) and their holdings, all as of the date of this Agreement, (ii) all subscriptions, options, warrants or calls relating to any shares of Stock of Borrower, including any right of conversion or exchange; (iii) to the knowledge of Borrower, each stockholders’ agreement, restrictive agreement, voting agreement or similar agreement relating to any such Stock; and (iv) and organization chart for Borrower.
2. Reserved.
3. Borrower uses the following trade name(s) in the operation of its business (e.g. billing, advertising, etc.):

Phoenix Payment Systems, Inc.
Electronic Payment Exchange
EPX
4. Borrower is a registered organization of the following type: a Delaware corporation.
5. The exact legal name (within the meaning of Section 9-503 of the Code) of Borrower as set forth in its certificate of incorporation, organization or formation, or other public organic document, as amended to date is set forth in Schedule 5.16(a).
6. Borrower is organized solely under the laws of the State set forth on Schedule 5.16(a). Borrower is in good standing under those laws and not organized in any other State.
7. The chief executive office and mailing address of Borrower is located at the address set forth on Schedule 5.16(b).

8. The books and records of Borrower pertaining to Accounts, contract rights, Inventory, and other assets are located at the addresses specified on Schedule 5.16(b).
9. The identity and Federal Employer Identification Number of Borrower and organizational identification number, if any, is set forth on Schedule 5.16(c).
10. Borrower has no Commercial Tort Claims against any Person, except as set forth on Schedule 5.16(d).
11. Other than as set forth on Schedule 5.13 and the Case, there are no judgments, actions, suits, proceedings or other litigation pending by or against or threatened by or against Borrower or any of its officers, that is likely to result in a Material Adverse Change.
12. Since its date of organization, the name as set forth in Borrower's organizational documentation filed of record with the applicable state authority has been changed as follows:

No changes.
13. Since the date of its organization, Borrower has made or entered into the following mergers or acquisitions:

None.
14. The assets of Borrower are owned and held free and clear of Liens, mortgages, pledges, security interests, encumbrances or charges except as set forth below: See Schedule P-2 attached to the Agreement.
15. Neither Borrower nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any Pension Plan other than (A) on the Closing Date, those listed in Schedule 5.11(d) and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.
16. Borrower has been and remains in compliance with all environmental laws applicable to its business or operations except as set forth in Schedule 5.32 and except to the extent that the failure to be in compliance therewith could not reasonably be expected to result in a Material Adverse Change.
17. Borrower has no Deposit Accounts, investment accounts, Securities Accounts or similar accounts with any bank, securities intermediary or other financial institution, except as set forth on Schedule 5.18 for the purposes and of the types indicated therein.
18. Set forth on Schedule 5.10(a) is a description of each Material Contract as of the date of the Agreement.
19. Reserved.

20. Borrower is not a party to any labor or collective bargaining or similar agreements with unions, labor organizations or other bargaining agents.
21. Set forth on Schedule 5.12(b) is a complete and correct list of any (i) strikes, work stoppages, work slowdowns or lockouts pending or, to the knowledge of Borrower, threatened against or involving Borrower, or (ii) unfair labor practice charges, grievances or complaints pending or, to the knowledge of Borrower, threatened by or on behalf of any employee or group of employees of Borrower, all during the previous five (5) years.
22. Borrower has not made any loans or advances or guaranteed or otherwise become Indebted or liable for the obligations of any others, except as set forth on Schedule 5.33.
23. Borrower does not own or license any Trademarks, Patents, Copyrights or other Intellectual Property, and is not a party to any Intellectual Property License except as set forth on Schedule 5.9 (indicate type of Intellectual Property and whether owned or licensed, registration number, date of registration, and, if licensed, the name and address of the licensor).
24. The Inventory, Equipment and other goods of Borrower are located only at the locations set forth on Schedule 5.27.
25. Set forth on Schedule 5.15 is a description of each Material License of Borrower as of the date of this Agreement.
26. Borrower does not own any fee interests in real property.
27. At the present time, there are no delinquent taxes due (including, but not limited to, all payroll taxes, personal property taxes, real estate taxes or income taxes) except as follows:

Lender shall be entitled to rely upon the foregoing in all respects and the undersigned is duly authorized to execute and deliver this Information Certificate.

Very truly yours,

PHOENIX PAYMENT SYSTEMS, INC.

By: Michael Jacoby
Name: Michael Jacoby
Title: Chief Restructuring Officer

Exhibit 2

[Budget]

EPX
DIP Loan
Budget

Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	13 Week
Week Ending	8/8/14	8/15/14	8/22/14	8/29/14	9/5/14	9/12/14	8/19/14	9/26/14	10/3/14	10/10/14	10/17/14	10/24/14	10/31/14	DIP
Beginning Cash	(6,176,231)	(6,086,261)	(6,496,653)	(6,299,066)	(7,955,556)	(8,309,843)	(8,723,949)	(8,731,169)	(8,128,702)	(8,428,655)	(8,889,387)	(8,967,873)	(9,496,930)	(6,176,231)
Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash receipts from TBBK Credit Card	-	-	-	150,000	-	-	-	350,000	-	-	-	-	(60,000)	440,000
Cash receipts from TBBK ACH	-	-	70,000	158,000	-	-	70,000	158,000	-	-	-	70,000	158,000	684,000
Cash receipts from TBBK/QVC ONLY	-	-	-	180,000	-	-	-	150,000	-	-	-	-	-	300,000
Cash receipts incremental	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash receipts from State of DE	140,067	-	200,000	180,000	-	-	-	200,000	150,000	-	-	-	200,000	1,040,067
Cash receipts from SL Kills/CA/EP/Other	-	-	-	-	45,000	102,500	-	-	45,000	102,500	-	-	-	295,000
Other Payments / (Repayments)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Collections	140,067	270,000	608,000	608,000	45,000	102,500	70,000	555,000	195,000	102,500	70,000	70,000	295,000	2,759,067
Operational Costs	(6,518)	(135,000)	(6,518)	(135,000)	(6,518)	(135,000)	(6,518)	(135,000)	(6,518)	(135,000)	(6,518)	(135,000)	(6,518)	(855,624)
Payroll Current	(44,819)	(5,400)	(1,000)	(5,400)	(50,825)	(1,000)	(1,000)	(5,400)	(50,825)	(1,000)	(1,000)	(5,400)	(1,000)	(32,400)
Employee Benefits	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(205,994)
MediBank (Flex)	(1,100)	(2,600)	(3,600)	(8,750)	(9,700)	(2,600)	(1,100)	(11,250)	(14,800)	(1,000)	(1,000)	(1,000)	(2,000)	(7,150)
Concord/Buspass/Fiserv	(26,060)	(2,535)	(200)	(60)	(26,050)	(1,478)	(1,256)	(60)	(1,311)	(1,479)	(1,056)	(200)	(60)	(345,000)
COGS	(5,000)	(13,137)	(12,774)	(31,615)	(13,137)	(4,375)	(4,398)	(8,202)	(1,912)	(6,074)	(4,644)	(8,202)	(4,112)	(11,008)
Direct Debits, Capital/Ins/Telc	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(225,000)
Referral Fees Current	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(43,600)
Capital/SupportIT	(370)	(7,854)	(150)	(1,870)	(390)	(4,336)	(8,828)	(2,516)	(2,208)	(20,500)	(623)	(370)	(1,750)	(195,284)
Compliance (PCI, SSAE, Mobile App)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(86,720)
Financial Audit/Taxes	(1,250)	(9,500)	(2,073)	(9,371)	(6,461)	(11,959)	(3,194)	(9,371)	(8,461)	(6,959)	(6,096)	(2,073)	(9,626)	(120,000)
Business Insurance	(370)	(7,854)	(150)	(1,870)	(390)	(4,336)	(8,828)	(2,516)	(2,208)	(20,500)	(623)	(370)	(1,750)	(136,400)
Legal Fees Current	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(32,866)
Operating Expenses	(1,250)	(9,500)	(2,073)	(9,371)	(6,461)	(11,959)	(3,194)	(9,371)	(8,461)	(6,959)	(6,096)	(2,073)	(9,626)	(45,700)
Rent	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(6,500)
T&E	(1,250)	(9,500)	(2,073)	(9,371)	(6,461)	(11,959)	(3,194)	(9,371)	(8,461)	(6,959)	(6,096)	(2,073)	(9,626)	(83,984)
Taxes	(107,560)	(371,949)	(35,578)	(227,802)	(479,635)	(40,131)	(208,436)	(183,464)	(351,321)	(187,881)	(31,450)	(187,881)	(98,927)	(2,538,425)
Utilities & Phone	32,488	(371,949)	234,422	380,188	(166,071)	(377,335)	28,869	649,564	11,535	(248,821)	(31,450)	(117,881)	198,073	220,642
Miscellaneous	32,488	(338,462)	(105,040)	275,158	107,087	(270,247)	(240,379)	409,185	420,721	171,899	140,450	22,559	220,642	-
Total Disbursements (Non-Backlog)	(107,560)	(371,949)	(35,578)	(227,802)	(479,635)	(40,131)	(208,436)	(183,464)	(351,321)	(187,881)	(31,450)	(187,881)	(98,927)	(2,538,425)
Net Cash Flow Operation	32,488	(371,949)	234,422	380,188	(166,071)	(377,335)	28,869	649,564	11,535	(248,821)	(31,450)	(117,881)	198,073	220,642
Cumulative NCF From Operations	32,488	(338,462)	(105,040)	275,158	107,087	(270,247)	(240,379)	409,185	420,721	171,899	140,450	22,559	220,642	-
Restructuring & Non Recurring Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Post-Panion Deposits	(85,000)	-	-	-	-	-	-	-	-	-	-	-	-	(1,353,750)
COO Payment to Vendors	(375,000)	-	-	-	-	-	-	-	-	-	-	-	-	(65,000)
DIP Interest Expense	(4,517)	(6,448)	(6,448)	(6,660)	(6,314)	(6,671)	(7,089)	(7,097)	(6,488)	(6,791)	(7,265)	(7,326)	(7,870)	(375,000)
Other	(444,517)	(36,448)	(36,860)	(36,860)	(186,314)	(36,871)	(37,088)	(47,097)	(311,488)	(211,791)	(37,265)	(421,076)	(37,870)	(87,357)
Total Non-Operating Disbursements	(444,517)	(36,448)	(36,860)	(36,860)	(186,314)	(36,871)	(37,088)	(47,097)	(311,488)	(211,791)	(37,265)	(421,076)	(37,870)	(1,881,137)
Net Cash Inflow / (Outflow)	(412,030)	(408,367)	187,844	343,538	(354,395)	(414,008)	(7,221)	602,467	(299,853)	(460,613)	(68,706)	(538,957)	180,204	(1,580,495)
Checks mailed but not cleared	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Repay Preposition Debt	(1,500,000)	-	-	-	-	-	-	-	-	-	-	-	-	(1,500,000)
Ending Cash (Before DIP Loan Funding)	(6,036,261)	(6,486,653)	(6,299,066)	(7,955,556)	(8,309,843)	(8,723,949)	(8,731,169)	(8,128,702)	(8,428,655)	(8,889,387)	(8,967,873)	(9,496,930)	(9,356,727)	(9,356,727)
Incremental Borrowing After Filing Date	1,912,030	2,320,426	2,122,865	1,778,327	2,133,711	2,547,717	2,554,838	1,952,471	2,252,424	2,713,036	2,781,742	3,320,998	3,160,495	3,160,495